United States Court of Appeals

for the Second Circuit

APPELLEE'S APPENDIX

Docket No. 76-1346

B P/S

In The

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

— *vs.* —

WALTER R. CONLIN,

Defendant-Appellant.

Appeal from a Judgment of Conviction in the United States District Court for the Western District of New York at 74-265

APPENDIX FOR APPELLEE

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EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS.

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	)	
	)	
-vs-	)	
	)	Ch. 74-265
WALTER R. CONLIN,	)	
	)	
Defendant.	)	
- - - - - - - - - - - - - - -	)	

Transcript of proceedings had and testimony taken in the above-entitled matter, before the HON. HAROLD P. BURKE, United States District Judge, and a Jury, in the United States District Court, Rochester, New York, on Wednesday, March 24, 1976; and Thursday, March 25, 1976.

APPEARANCES:

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Appearing on behalf of the Defendant.

* * * * *

Rochester, New York

Wednesday, March 24, 1976

2:40 P.M.

- - -

MR. HOULIHAN: The Government calls Brian Qualey.

B R I A N Q U A L E Y,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mr. Qualey, by whom are you employed?

A The Small Business Administration.

Q How long have you worked with the Small Business Administration?

A Since August 10th, 1972.

Q And that was just after the flood, is that right?

A Right.

Q You are a resident of the Elmira area?

A Yes.

Q What is your position with the Small Business Administration?

A Presently Loan Assistant.

Q On or about January of 1974 you worked there as well?

A Yes.

Q Were you a Loan Assistant at that time?

A Loan Servicing Assistant.

Q During that period of time did you have an opportunity to meet and talk with Walter Conlin at all on occasion?

A Yes, I did.

Q In what capacity did Mr. Conlin get in touch with you?

A The first time was to supply loan application papers for certain borrowers, for applicants.

Q And he would come in and hand you those applications, is that right?

A Yes. I would screen them.

Q Did there come a time that you handled an application of a Thomas Gill or had anything to do with an application of Thomas Gill?

A Yes.

Q When was that?

A Right around the early part of January, 1974.

Q And would you tell the members of the Jury what happened on that day?

A Well, Mr. Conlin came with some information for Howard Garrity, who was working on the file, and Howard was busy,

and he asked me to see Mr. Conlin, to get whatever information he had.

Q So Mr. Garrity asked you to talk to Mr. Conlin?

A Yes.

Q Did you go and see Mr. Conlin?

A Yes, I did.

Q And do you see Mr. Conlin in the courtroom?

A Yes, I do.

Q And would you describe where he is?

A The man on the end (pointing).

MR. HOULIHAN: Let the record reflect that he identified the defendant, Walter Conlin.

Q Did you, in fact, go out to meet Mr. Conlin at that time?

A Yes. I went out to see Mr. Conlin. He gave me some tax returns. I, in turn, took them back in and gave them to Howard Garrity.

Q Do you know what tax returns they were?

A For Gill's Photo.

Q For '70 and '71?

A Federal returns.

Q Federal returns?

A Yes.

Q On Thomas Gill, and that was Gill's Photo, is that right?

A Correct.

Q And Mr. Conlin was Mr. Gill's accountant at that time?

A Yes, he was.

Q Were you aware of that?

A Well, he told me he was the accountant for Mr. Gill.

Q And he actually turned those over to you physically, is that right?

A Yes, he did.

Q And what, if anything, did you do with them afterwards?

A I told him that Mr. Garrity would get in touch with him, and I went in and gave them to Howard.

Q Did Mr. Conlin leave at that time?

A Yes, I believe so.

MR. HOULIHAN: I have no further questions of this witness.

* * * * * *

* * * * * * *

JAMES J. CRISTOFARO,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mr. Cristofaro, by whom are you employed?

A Small Business Administration.

Q How long have you worked for the Small Business Administration?

A Since August of 1972.

Q And in what capacity are you employed?

A I am presently the Loan Supervisor. When I started, I was a Disaster Loan Specialist.

Q Did you have prior training before you took the job with Small Business Administration with regard to loans?

A An educational background.

Q And at the time you took the job with the Small Business Administration, this was just following the floods down in the Elmira area, is that right?

A Yes.

Q And you were in the Elmira office?

A Yes.

Q Around January of 1974 what were your duties?

A In January of 1974 I was still in charge of processing and reviewing and making recommendations on staff loans, loan reconsiderations and loans that had been previously withdrawn, and also making recommendations on loans that we already had.

Q And were there certain requirements that had to be fol-

lowed in order to get a disaster relief loan?

A Well, there was certain information that had to be submitted in order to support the loan application.

Q And was that information on any particular document at all?

A Well, we had information on the loan application itself, and on all loans in excess of $5,000 we required a copy of the previous two years' tax returns. We also required supplementary data, such as estimates of loss and other verification of loss, and current financial information.

Q Are you familiar with the defendant, Walter Conlin?

A Yes, I am.

Q And how did you first meet him?

A I believe I first met Mr. Conlin at some point late in 1972 when he was representing applicants and submitting loan applications. I believe I met him in the screening process.

Q And do you recall Mr. Conlin handling a loan application for Thomas J. Gill?

A Yes.

Q And were you supervising that loan at that time?

A I was given the loan by Mr. Garrity in order to consider the reconsideration of the loan.

Q I show you Government's Exhibit 1 marked for identification. Can you tell me what that is?

A This file (indicating)?

Q No, the big file.

A This is the loan case file.

Q And whose loan application is it?

A This would be Mr. Gill.

Q Is that the file that you forwarded to my office last week?

A Yes.

Q And is that file maintained in the ordinary course of business at the Small Business Administration?

A Yes, it is.

Q Is it the ordinary course of business to keep a file on every loan application?

A Yes, it is. This particular file would have been kept for two years after the assistance was declined; and thereafter, it would have been sent to the Federal Records Center.

MR. HOULIHAN: I offer all of G-1.

MR. LEVY: Your Honor, I have had a chance to look at this file, and

* * * * * *

DIRECT EXAMINATION CONTINUED

BY MR. HOULIHAN:

Q Mr. Cristofaro, can you tell me when the original loan application of Thomas Gill was submitted to the Small Business Administration?

A Yes. The application was submitted to our office on January 15, 1973.

Q And was the application complete at that time?

A No.

THE COURT: Was that an individual or an application in his name "doing busines[illegible]

A There is an application for Thomas Gill, doing business as Tom Gill's Photo Studio.

Q And that wasn't incorporated, is that right?

A No. It was just the studio.

Q What information was missing from that loan application at that time?

A Tax returns for the years 1970 and 1971. These would be the business tax returns.

Q And did you, or someone from the Small Business Administration, request Mr. Gill to provide those returns?

A Yes. Do you want the dates?

Q If you can get them, if it is in the file.

A They should be.

On January 16, 1973, in a letter sent to Thomas Gill from Mike Walsh, who was the acting Branch Manager for Finance, requested the tax return for the previous two years and a current balance sheet.

Q That was one day after the application was submitted, is that right?

A Yes.

Q Was there any subsequent request for the tax return?

A On March 22nd, 1973, a letter was sent by Robert Williams, who was a Loan Specialist, requesting the copies of the tax returns for 1970 and '71, or 1971 and '72. There is other information here requested.

Q Did there come a time that the tax returns were ultimately submitted to the Small Business Administration?

A Yes.

Q I call your attention to the date of January 18, 1974. Were you in charge of this particular file on that date?

A Yes, I was.

Q And what was the purpose that you had that file on that day?

A The purpose was to review the file, because Mr. Conlin

had submitted the tax returns, or copies of the tax returns, for 1970 and 1971. And the file was given to me by Mr. Garrity to review and determine whether or not we could accept a reconsideration request. On January 18th, Mr. Gill and Mr. Conlin came to my office for the purpose of an interview and a discussion on the loan.

Q Did you have a conversation with them prior to the time they came to your office?

A The day before I had called up Gill's Photo Studio. I talked to Mrs. Gill, and I asked her to have her husband call em. He called me the morning of the 18th and indicated that they could be in late on that morning.

Q Did you review the file prior to the time that they came in?

A Yes, I had.

Q And were the tax returns in the file at that time?

A Yes, the copies.

Q The copies of the tax returns?

A The copies of the tax returns were in the file.

Q And did you, in fact, dictate a letter prior to the time they came to the office in connection with that file?

A Yes. The letter, as a matter of fact, was being typed the morning of January 18th.

Q And this was before Mr. Gill and Mr. Conlin came in?

A Yes.

Q And did Mr. Conlin and Mr. Gill ultimately come into your office?

A Yes, they did.

Q At about what time was that?

A Somewhere around eleven or eleven thirty.

Q This was January 18th?

A On January 18th, 1974.

Q Would you tell the members of the jury what happened at the time they came into the office?

A We had a general discussion as to the loan request, and the use of proceeds, and after some preliminary discussions, I handed the copies of the tax returns to Mr. Gill and asked him to sign them. Since Mr. Conlin was also there, I asked Mr. Conlin to sign them, too, since he was the preparer. They both signed and dated the return on that day, I believe.

Q Was there any discussion at that time regarding whether these were filed tax returns?

A I did not say anything. I did indicate to th n upon handing him my memorandum, which requested other information to support the loan requests. In that letter I did indi-

cate that we may feel it is necessary to verify the accuracy of the tax returns, and we would like to have permission to do so.

Q Where were the tax returns prior to the time you asked Mr. Gill and Mr. Conlin to sign them?

A They were in the file.

THE COURT: You mean the copies of the tax returns?

A The copies of the tax returns were in the file.

Q And they were in the file, and you reviewed them earlier that day?

A I reviewed them earlier, I believe, about a week prior.

Q Then you gave it to them to sign, and did they, in fact, sign them?

A Yes, they did.

Q Then what happened to them?

A Well, then I handed the --

Q Were they handed back to you at that time?

A Yes. They were given back to me, and I placed them on my desk.

Q Then what happened?

A Then I handed them my memorandum, which requested additional information.

Q Do you have that memorandum in that file?

A Yes.

Q Will you find it for us, please?

A I have it in front of me.

Q This is a memorandum dated January 18, 1974?

A Yes.

Q That is a two-page memorandum, is that right?

A Yes.

MR. LEVY: It is a letter, isn't it?

A It is a letter, yes, in letter form.

THE COURT: From whom to whom?

THE WITNESS: Pardon me?

THE COURT: If it is a letter, who sent it and to whom?

A I handed it to Mr. Conlin.

THE COURT: Then it is from you to Conlin, addressed to Conlin?

A No. It is from me to Mr. Gill.

THE COURT: To Mr. Gill?

A I will correct myself. I handed it to Mr. Gill.

Q This is the same letter that you previously described as being typed prior to the time Mr. Gill and Mr. Conlin

came to the office, is that right?

A Yes, it is.

Q What did you do with that letter after they had signed the tax returns and had given them back to you and you put them on the desk? What next happened?

A I handed the letter to Mr. Gill, and asked him to read it, and that if they had any questions to please ask them, and Mr. Gill read the letter, and I believe Mr. Conlin read the letter. And at that point I started talking to Mr. Gill again about the use of proceeds and the loan request itself, and Mr. Conlin picked up the copies of the tax returns from my desk and stuffed them into his briefcase.

MR. HOULIHAN: Your Honor, may I read this one paragraph, and this is a letter dated January 18, 1974, well within the date.

THE COURT: All right.

MR. HOULIHAN: And the third paragraph of that letter says: "It may be necessary to verify the accuracy of the figures on the tax returns; therefore, the SBA would like to have written

permission from you to verify the accuracy of your tax returns with the Internal Revenue Service. It would be helpful if you requested stamped copies from the IRS and deliver them to us."

Is that an accurate reading of that paragraph?

A Yes.

Q It was after Mr. Conlin read that that he took the returns from your desk, is that correct?

A Yes.

Q He put them in his briefcase, is that right?

A Yes, he did.

Q And what, if anything, occurred after that?

A I saw him do this, and I told Mr. Conlin that the copies were, in fact, a part of our file; therefore, not removable except by authorized employees or upon written request from an applicant.

Q And what, if anything, did he say at that time?

A He didn't say anything. And I asked him to return the copies. He said, "No. I will get the originals for you."

I said, "Well, I don't need the originals. All I need are the copies."

And he just left them in the briefcase.

Q Did you again ask him to give them back to you?

A I asked him several times to return them to us.

THE COURT: You mean at that particular instance or later?

A At that particular instance. I also turned to Mr. Gill and said, "Mr. Gill, these are supposed to be copies of your tax returns. Will you please advise your representative to give them back to us?"

Mr. Gill was just standing there somewhat dumbfounded. He didn't say anything, nor did he do anything. So I advised Mr. Conlin that taking these things as he did might constitute an unlawful offense.

Q What did he say to that?

A He didn't say anything.

Q Was there any conversation between you and Mr. Conlin and Mr. Gill subsequent to that which you have already told us?

A No. Will you state the question again?

Q All right. You apparently asked him two or three times to give you back the returns, and he said, "No." Was there any other conversation at that time that you can recall?

A No.

Q And did there come a time that you asked someone else to come into the office?

A Yes. I asked Mr. Garrity to come in and advised Mr. Garrity that Mr. Conlin had removed the copies from the file, and then Mr. Garrity asked him to please return the copies, that they were not his property at that time.

Q And what did Mr. Conlin say?

A Mr. Conlin didn't say anything, to my knowledge. He just stood there.

Q And he was standing up? Was Mr. Gill standing up?

A I believe at that time they were both standing up.

Q And was Mr. Conlin doing anything at that time?

A Well, I advised Mr. Conlin that I would call the FBI if he did not return them. So I did pick up the phone and started to call the FBI, and at that point Mr. Conlin began to rip the documents --

THE COURT: To what?

A To rip and tear up the documents in his briefcase.

Q You were standing there watching him doing this, is that right?

A Yes, I was.

Q When you told him that you were going to call the FBI, did he say anything?

A He just stood there.

Q He didn't say anything to you?

A Not that I can recall.

THE COURT: We will take a short recess.

(Recess from 3:35 P.M. to 3:50 P.M.)

DIRECT EXAMINATION CONTINUED

BY MR. HOULIHAN:

Q Mr. Cristofaro, just before the recess you mentioned that you had called the FBI?

A Yes.

Q You made that call personally, is that right?

A Yes, I did.

Q Who did you get?

A I asked for Mr. Bucher or Mr. Rudy. I don't know who I talked to.

Q And did you explain to them what was happening?

A Yes.

Q What did you ask him to do?

A They indicated to me that they would come right over.

Q Now after the telephone call to the FBI --

THE COURT: You were talking to

somebody in the FBI right in Corning?

A In Elmira.

THE COURT: In Elmira?

A Yes.

THE COURT: All right.

Q Did Mr. Conli say anything to you during this period of time?

A After I called the FBI, Mr. Conlin asked if he could call his lawyer. I said, "Yes."

Q And did he?

A He tried to. He was unable to reach him.

Q Where were the tax returns during this period of time?

A After I called the FBI, Mr. Conlin was apparently in the process of tearing them up. I also told him that not only had he removed property that was in possession of our agency, but he was also destroying them, and this could constitute unlawful action.

Q And did he say anything to you in response to that?

A No. At that point he seemed to be in a hurry to leave.

Q And was he standing up throughout this period of time?

A Yes.

Q And what was Mr. Gill doing at this time?

A Mr. Gill was just standing there and not saying anything.

Q Mr. Gill didn't say anything at all?

A No.

Q Did there come a time that Mr. Conlin wrote something to you?

A Yes. Mr. Conlin wrote on a piece of paper, something to the effect of, "I hereby withdraw the application," and asked Mr. Gill to sign it, which Mr. Gill did, and threw that on my desk.

MR. HOULIHAN: Would you mark this for identification?

(Government's Exhibit 3 marked for identification.)

Q Are you familiar with Government's Exhibit 3 marked for identification?

A I'm not familiar with this. I don't recall it.

Q You don't recall this one?

A No, I don't.

THE COURT: Just a moment. You said you spoke about a withdrawal, which you said they signed and threw on your desk. That is not the one?

A No. Mr. Gill signed a little sentence which Mr. Conlin had written.

THE COURT: But the paper, G-3, is not that withdrawal?

A It is not that piece of paper.

MR. HOULIHAN: Your Honor, the bailiff is just going to get that one from the FBI agent.

THE WITNESS: It may be in the file.

Q In your file?

A In the Gill file.

Q Would you look and see if it is there?

MR. LEVY: It is the first yellow sheet of paper.

THE WITNESS: I have the paper here.

Q Now this is part of the Small Business Administration file?

A Yes.

Q And it says --

THE COURT: If you are reading from something, mark it for identification.

MR. HOULIHAN: May we mark that G-1A? It is part of Government's Exhibit G-1.

THE COURT: You marked the other one G-3. I should think you would mark this G-3A.

MR. HOULIHAN: This is part of Government's Exhibit G-1. It is one of the letters in the file.

THE COURT: It relates to G-3. Apparently, G-3 is the one you thought he was referring to. He said he wasn't.

MR. HOULIHAN: Right.

THE COURT: Mark this one G-3A.

(Government's Exhibit 3A marked for identification.)

THE COURT: You might as well take it right off his file, because you are going to be referring to it. G-3A come from the file.

Q I show you Government's Exhibit 3A marked for identification. Can you tell me what that is?

A That is dated January 18, 1974. It says: "I hereby withdraw my application." And it is signed "Thomas J. Gill."

Q Who wrote that?

A Mr. Conlin wrote, "I hereby withdraw my application." Mr. Gill signed it.

Q And what did they do with it after that was done?

A They threw it on my desk.

Q And did they say anything at that time?

A Not that I can remember.

Q And this was subsequent to the time he had already taken the returns from your desk?

MR. LEVY: Wait a minute. I object to that as leading.

THE COURT: I will sustain the objection.

Q In relationship to the time that the tax returns were taken from your desk and they were being ripped up by Mr. Conlin, when was that note written?

A This note was written after I called the FBI. It was after Mr. Conlin had removed the copies of the tax returns from my desk.

Q Under the procedure of the Small Business Administration, may an applicant just withdraw his application and get all his files back.

A Under our procedures, an application --

THE COURT: That's two questions.

He can withdraw his application any time, can't he?

A Yes.

THE COURT: Now the question whether he can get his papers back is another.

Q Can he get his papers back?

A Upon the written request of an applicant, we can return papers to him which he submitted to us. We would not be able to give him internal memorandums or reports or other agency-generated data. If in considering the request for return of information, there is evidence of wrongdoing or anything of that sort, we would not return the papers.

MR. LEVY: I object to that, Your Honor.

THE COURT: Objection is overruled.

Q Did you, in fact, return any documents to Mr. Gill or Mr. Conlin at that time?

A No.

THE COURT: When you use the term "evidence," what you mean by that

is what you think is evidence of wrong-doing?

A Yes.

Q Did they ask you to give those things back to them?

A I can't recall if they did or not.

Q Now about how long a period of time did this transpire, from the time that Mr. Conlin came into your office and the FBI finally arrived?

A I would say about an hour.

Q An hour?

A Yes.

Q How long a period of time after Mr. Conlin removed the tax returns from your desk transpired until the time the FBI arrived?

A I would say ten to fifteen minutes.

Q Was there anyone else in your office with you at that time other than Conlin, Gill and yourself?

A Mr. Garrity was in the office.

Q You had called him in?

A Yes.

Q And did anyone else come in?

A Well, the FBI agent came in.

Q Was there a Mr. McDevitt around at that time?

A Yes. Just before the FBI arrived, Mr. Conlin was making an effort to leave the building, and I quickly advised Mr. McDevitt, who was the Branch Manager, what was going on, and he advised Mr. Conlin to return the papers and not to make a scene, so to speak, that there wouldn't be any physical restraint or anything, and to "please return the papers." Within seconds of that, the FBI came in.

Q Did Mr. Conlin say anything at all to Mr. McDevitt?

A Mr. Conlin may have said something, but nothing that I recall.

Q He, in fact, did not give back the papers, is that right?

A No, he did not.

THE COURT: Who is McDevitt, the security man?

A Mr. McDevitt is the Branch Manager of the Small Business Administration.

THE COURT: The Branch Manager?

A Yes.

Q Did anyone push Mr. Conlin or touch him or force him to stay there at all?

A No.

Q But they did encourage him not to go?

A Yes.

Q Subsequent to the occurrences of January 18, 1974, did Mr. Gill re-submit an application to the Small Business Administration, or ask for an additional reconsideration of his loan?

A Yes, he did.

Q And as I understand it, the meeting that you had on the 18th was to reconsider a loan application that expired or that had been withdrawn, is that right?

A The meeting on the 18th was primarily an interview to discuss what was needed to support his loan request. I did indicate at that time if he could meet those information requirements, we would reconsider his application.

Q Is it a requirement that he submit a tax return?

A Yes.

Q And that is part of your loan procedures that is set forth on the application?

A In a disaster loan policy, that was a requirement.

Q And that was for all loans in excess of what amount?

A All loans in excess of $5,000.

Q Do you know what the loan request was on January 18, 1974?

A Well, the original request was about $17,000, and on January 18, 1974, I think we were talking about a loan request of $60,000.

THE COURT: I was a little confused. The testimony already is that the application for $60,000 had been reduced to just under $50,000 so that it could stay in the Elmira office. Are you familiar with that?

A It may have been, but --

THE COURT: If it was over $60,000, it would have to go out of the Elmira office, naturally, wouldn't it?

A If it was over $50,000, it would have been processed and recommended for approval or declination within the Elmira office.

THE COURT: That is contrary to the testimony we already have.

A Well, my testimony is --

THE COURT: Just a moment. So you will be familiar with it, the prior witness, Mr. Qualey, testified that Conlin asked him to reduce the application to just under $50,000 so that it wouldn't have to go out of the Elmira office for processing. That is not the fact, is it?

A He could have asked for that reduction had the loan been in excess --

THE COURT: If it was over $50,000, would it go out of your office, is that a fact?

A Yes.

THE COURT: You say "yes," but you have already said that if it was $60,000, it would be processed by your office.

A Every loan is processed by our office and approved or declined and recommendations made for that purpose. In the event that a loan amount is over $50,000, it would have to go to the Regional Office for a review by that office prior to our distributing an authorization.

Q If the loan application were for forty-nine nine, you could approve it and the loan granted without any review by anyone else, is that right?

A The loan would not have to be sent out of the Elmira office.

Q I call your attention to Defendant's Exhibit 1 marked in evidence, which appears to be a loan application of Thomas Gill, d/b/a Gill's Photo, and it shows, "Request only 49-9," is that correct?

A That's correct.

Q But they claim damage in the amount of $60,000, is that right?

A Yes.

Q Did there come a time that Mr. Gill submitted a new application for a loan, or asked for reconsideration of this loan after the events of January 18, 1974?

A Yes, he did.

Q At that time did he submit tax returns?

A He submitted copies of his tax returns and other supporting information.

Q Can you find those copies of those returns in that file?

MR. LEVY: I'm going to object to what Mr. Gill did on his own or which Mr. Conlin had nothing to do with.

THE COURT: Objection is overruled.

THE WITNESS: Did you want to know what particular information he submitted?

Q Did he submit tax returns subsequent to January 18, 1974, for the years 1971 and 1972?

MR. LEVY: I object, Your Honor.

THE COURT: You car show on

cross examination that Conlin had nothing to do with that happened after January 18th if you want to. Readily, I don't know. That is why I am receiving the testimony.

MR. LEVY: I'm going to object if this information was after the date of the indictment in October of '74, which I believe it is.

THE COURT: Was it?

MR. HOULIHAN: I don't know.

THE COURT: Then if you don't know, I won't receive it.

Q Do you know when that was submitted?

A Well, the letter of submittal was dated December 4th, 1974.

THE COURT: I won't receive it. That is after the date of the indictment.

THE WITNESS: We would have received it two or three days afterwards.

Do you still want me to answer the question?

MR. HOULIHAN: No. That is okay.

BEST COPY AVAILABLE

Q I call your attention to Government's Exhibit 2 marked for identification. Can you tell me what that is?

A This is the personal loan application of Walter Conlin, disaster home loan application.

Q When was that application submitted?

A The application was dated January 12th, 1973. It was received on January 15th, 1973.

Q What was the application amount?

A The loan request was for $27,400.

Q And because of the amount, was Mr. Conlin required to submit tax returns?

A Yes, he was.

Q And did he, in fact, submit tax returns?

A Mr. Conlin submitted a copy of his 1971 tax return.

Q Do your procedures require that the return submitted be a filed return, or a copy of the filed return?

A Well, generally, we expect it to be a copy of the filed return. We don't expect it to be --

THE COURT: If it isn't filed, it isn't a return.

A Right. I can quote Item No. 3 on the loan application: "If loan requested is $5,000 or more, you must provide a tax return from the most recent taxable year for your-

self, any members of your household who filed returns, and any controlled corporation. (Control of a corporation shall be assumed where you and members of your household own more than fifty per cent of the outstanding common stock, either directly or indirectly)"

Q What was the year of the tax return submitted by Mr. Conlin?

A 1971.

Q What is the purpose that SBA has in requesting filed tax returns in loan applications?

A The tax return is used by a loan officer or loan assistant as evidence relating towards repayment ability in which the tax return will show earned income or other sources of income. We also use that to determine whether or not the applicant is, in fact, a taxpayer and not a dependent of someone else. A dependent of someone else would not be eligible for a "forgiveness grant."

There is other information on the tax return which may be helpful, but --

Q For example, do you rely on the tax return to determine that perhaps a person owns a house?

MR. LEVY: I object. That is leading.

THE COURT: I will sustain the objection.

Q Are there other reasons that you rely on those tax returns in granting the loan other than the ones you stated?

A Generally, this repayment ability is a primary question involved.

Q And was Mr. Conlin granted a loan in connection with that application?

A Mr. Conlin was granted a loan in the amount of $27,300. The loan carried a $5,000 "forgiveness" and one per cent interest rate.

Q A one per cent interest rate?

A Yes.

Q You talk about a "forgiveness." What is that?

A On August 16 of 1972, Congress passed the Disaster Act, which stated that physical disaster loans would carry an interest rate of one per cent and that the first $5,000 of said loan would be forgiven.

Q That means you didn't have to pay it back?

A Yes.

Q Was that true in Mr. Conlin's case?

A Yes, it was.

Q If you borrowed only $5,000, would that mean that you

wouldn't have to pay anything back?

A If the forgiveness grant was mailed, there would be no repayment.

Q When this decision was made on August 16, 1972, was the forgiveness grant in the amount of $5,000?

A It was increased from $2,500 to $5,000 by that particular law. It might be August 18th that the Disaster Act was passed.

Q But it is within a couple of days of August 16?

A Yes.

MR. HOULIHAN: That is all the questions I have at this time.

CROSS EXAMINATION

BY MR. LEVY:

Q This "forgiveness" applied to everyone and just not to Mr. Conlin?

A It applied to everyone who had a physical loss, and the forgiveness was limited to the extent of the loss. An individual was entitled to only one forgiveness.

Q It wasn't special to Mr. Conlin -- it was to everybody in that position, is that correct?

A Yes.

Q Now you reviewed the file before you spoke to Mr. Conlin

* * * * * *

Q Were these agents regularly stationed in Elmira?

A I think so.

Q And they lived in the Elmira vicinity?

A I guess they do.

Q You told Mr. Conlin that he couldn't take those papers with him, is that correct?

A Yes.

Q And you told us Mr. Conlin didn't say anything in return, is that right?

A I can't remember him saying anything other than the fact he did say, "I will bring you the originals."

Q But he never argued with you, or he never said anything back when you said, "You can't take them"?

A We had a short discussion, but I can't remember what was said.

Q Didn't he argue with you and say to you, "I came in with these papers, and I can take them out with me"?

A He might have said that.

Q Do you remember him saying that more than once?

A I don't remember him saying it.

Q Do you remember him arguing with you and not just sitting back and having you talk, as a one-sided conversation?

A I can't remember what he said, if anything.

Q You told us yesterday that every time you said something to him that he just stood there and didn't say anything and didn't reply to you?

A I kept asking him to return the papers to me.

Q Didn't he argue with you and say, "These are my papers. I came in with them, and I can go out with them"?

A I don't recall him saying that. He did say he would get the originals.

Q In your presence, after the FBI got there, the FBI called Mr. Larimer, Assistant United States Attorney in Rochester?

A I think he did, yes.

Q At that point Mr. Conlin was put on the phone to talk to him, was he not?

A I think so, yes.

Q And did he tell that gentleman, in your hearing, "These are my papers. I came in with them, and I'm going to take them out with me"?

A I don't recall what he said.

Q Did he say he brought them there that day, January 18, 1974?

A I don't recall.

Q To your knowledge, at that same time was he permitted to call an attorney?

A Yes. He attempted during the whole course of events to make two calls.

Q Did he talk to an attorney by the name of Mr. Walsh or Mr. Welch from Corning?

A I can't remember whether or not he was able to reach Mr. Walsh.

Q Do you recollect him telling Mr. Walsh, "I came in with these papers, and I think I have a right to take them out"?

A No, I don't.

Q Did you understand why he was arguing with you for not returning them to you?

A The fact is that he did not have the papers when he came in with them. I had them.

Q But didn't he say that he brought them in?

A He might have said that.

Q Do you know whether or not he had any income tax papers with him when he came to your desk?

A No, I don't know if he did or not.

Q Do you know whether or not he had any papers of any returns with him when he came to your desk, in his briefcase?

A I don't know.

MR. HOULIHAN: Objection, Your

Honor. The question is about the specific returns, not anything else.

THE COURT: I understand that. Objection is overruled.

Q Did you have a discussion with Mr. Conlin and Mr. Gill under what terms he could take and remove the papers?

A I don't remember if I did or not.

Q Did you say to them, "If you withdraw your application, then you are entitled to the papers"?

A I don't know if I said that or not.

Q And after such a discussion, did they actually --

MR. HOULIHAN: Wait a minute. I object to the form of that question.

THE COURT: I will sustain the objection.

Q At one point in this conversation, did they hand to you this handwritten note, Government's Exhibit 3 for identification?

A It was thrown on my desk.

Q Did you see it written?

A I saw Mr. Conlin writing it.

Q And Mr. Conlin, in his handwriting, printed, "I hereby withdraw my application," isn't that right?

A Yes.

Q And then he gave it to Mr. Gill to sign, and Mr. Gill signed it, "Thomas J. Gill," is that correct?

A Yes.

Q And that was done in front of you?

A Yes.

Q And that was given to you, is that correct?

A It was thrown on my desk.

MR. LEVY: I offer Exhibit G-3A for identification, and I move G-3A into evidence.

MR. HOULIHAN: I have no objection at all.

THE COURT: It is received.

(Government's Exhibit 3A marked in evidence.)

Q Was G-3A signed and thrown on your desk, as you say, before the FBI was called?

A After the FBI was called.

Q And before they got there?

A Yes.

Q Did you recollect whether you had any discussion with them on their withdrawal of their application?

A Relating to that specific paper?

Q Yes.

A They threw it on my desk. I don't recollect saying anything to them.

Q Do you recollect whether you said anything, or anybody else there said anything to Mr. Gill, saying, "Do you know what you are doing"?

A I might have. I don't know.

Q Do you know whether or not you said, "Do you know that what you are doing will mean the end of your application"?

A I don't remember saying that.

Q Do you recollect that you tried to discourage Mr. Gill from signing it?

A No. I didn't try and discourage him from signing it.

Q At the time they signed this, were they both standing next to you?

A I think they were.

Q Now the time they signed this, this was about at least a half hour after they had entered, is that correct?

A Yes.

Q Do you know whether or not on that day Mr. Conlin gave you, or showed you, any papers other than handling the two tax returns?

A I can remember him looking at the letter I gave to Mr. Gill.

Q So the only thing you can recollect is that the only documents that were handled were G-3A, the two tax returns and this letter, Exhibit D-2?

A I think that is correct.

Q And no other papers were handled?

A Not that I remember.

Q Did you keep this in your file, Exhibit G-3A?

A The statement signed by Mr. Gill?

Q Yes.

A I put it in the file.

Q You put it in the file?

A Yes.

Q In your dealing with these various disaster victims, was it common that they lost their tax papers and their personal papers in the flood?

A Many people had lost their personal papers in the flood.

Q And that your Administration had tried to accommodate them, understanding that many papers had been lost, is that correct?

A Yes.

Q There was also certain time limits set up as to when they

* * * * * *

Rochester, New York

Thursday, March 25, 1976

2:15 P.M.

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MR. HOULIHAN: After the Government's witnesses have testified, is it all right if they are present in the courtroom, after they have completed their testimony, Your Honor?

THE COURT: As long as they won't testify again.

MR. HOULIHAN: I don't expect them to.

The Government calls Howard Garrity.

H O W A R D E. G A R R I T Y,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mr. Garrity, by whom are you employed?

A The Small Business Administration.

Q And how long have you worked for the Small Business

Administration?

A It will be four years in July.

Q And that would mean that you started with the Small Business right after the flood, is that right?

A That's right, in July of '72.

Q And what was your title in July of 1972?

A I was a Loan Officer at that time.

Q What is your title at this time?

A I am a Commercial Loan Officer.

Q And during January of 1974, did you have another title?

A Yes. At that time I was Assistant Branch Manager.

Q Subsequent to the flood of 1972 the Small Business Administration set up an office in Elmira, New York, to help people who suffered some loss as a result of the flood, to get back on their feet, is that right?

A That's right.

Q Did that include businesses as well as individuals?

A Yes, home loans and businesses.

Q What was the purpose of the loans? Why did they give the loans?

A Because of Hurrican Agnes, the flooding of June, 1972.

Q And were these loans given in an effort to put the people back in the same position they were prior to the flood?

A Yes, so much as possible.

Q With regard to businesses, was it the intention of the Small Business Administration to reimburse people for damages or loss of inventory as well as other items that they had in their businesses?

A That's right.

Q How did a person who suffered a loss from a business make application to get this money from the Small Business Administration?

A They would come into the agency, and we would sit down with the applicant or his representative, and we would give them an application, along with a list of other materials that had to be completed. And we would also give them a checklist of additional items which they would have to submit. Once this information was completed, it was brought back in, and we would accept the application for processing.

Q I show you Government's Exhibit 1 marked in evidence, which has been identified as the Small Business Administration loan file of Thomas Gill doing business as Thomas Gill Studio and Camera Center. At any time during your service with the Small Business Administration, did you supervise that loan?

A Yes. I handled it.

Q And referring now to the application in that loan, would you please find the original application?

A Yes, I have it (indicating).

Q And is that an original application?

A This is a copy.

Q Do you have an original in the file?

A No.

Q Does that particular application have a SBA form number?

A Yes, it does. This is SBA Form 5.

Q The application is Form 5?

A Form 5.

Q That is Form 5?

A Yes.

Q And that was submitted as of what date?

A January 15, 1973, which was the final date for filing the applications for Hurricane Agnes.

Q I show you Defendant's Exhibit 2 in evidence, which is a letter to Mr. Gill from Mr. Cristofaro, and it says: "The following information is needed in order to submit your request for reconsideration:

"Form 5 -- Complete all items."

Is the "Form 5" in that letter the same Form 5 as

the application? I mean that is Form 5, is it not?

A This is Form 5, yes.

Q In evaluating a loan application, what information did the Small Business Administration use?

A The information that was required, first of all, on the application itself, various financial data is required. There is a place on Page 2 of the application where you have to list your assets and liabilities, et cetera. In addition, we requested a 912 Statement, which is a Personal History Statement. In addition we requested a personal balance sheet on the applicant, and we also required copies of tax returns.

Q In the case of businesses, did you require more than one tax return?

A Two years. We usually went back two years.

Q Now on the Small Business loan application of Mr. Gill, is there any information as to the amount of loss of inventory he has as a result of the flood?

A I'm not sure that I understand that question.

Q On the application, does the application indicate how much inventory Mr. Gill had at his camera shop that was lost in the flood?

A Yes. The amount, I assume we are talking about, is the

loan amount requested?

Q Yes.

A Yes.

Q What was the loan amount?

A Twenty-five thousand for inventory, thirty-five thousand for equipment, for a total of sixty thousand.

Q On the financial statement, which is on Page 2 of that application of Mr. Gill, does it show there what finished inventories were present?

A Yes, it does. It shows a figure of $27,011.

Q On the other portion of that, does it show the value of the machinery that he had?

A Yes, he does. It shows two figures here. It shows a cost figure of $60,341 and a net figure after depreciation of $35,934.15.

Q In your experience as a Loan Officer, do you have to make decisions on whether to grant a loan based upon the information that you've got?

A That's correct.

Q And have you had any experience with businesses to know what kind of inventory they might have and what kind of machinery and equipment they might have in terms of what kind of business it is?

A Yes.

Q And in your procedure in evaluating loan applications, do you use any particular figure in determining whether the amount of inventory claimed to have been lost is an accurate figure?

A Well, yes, we do. This is where the tax returns play a very important part.

Q In what way would that be?

A Well, the tax returns would give us a complete financial picture of the business itself. In other words, we know what the gross sales are. We know what the expenses are. We know what kind of a profit picture we have, so that we can determine whether or not the applicant can repay the loan. We know what the value of the equipment is. In other words, the tax returns give the original purchase price of the equipment and also shows the depreciation taken so we can arrive at a net value of equipment after depreciation. It also gives us some idea as to what the beginning inventories are and what the ending inventories are. And this is very important when you try to evaluate any claim where inventory and machinery equipment losses are involved.

Q Each tax return for a business which shows beginning in-

ventories and the ending inventories and also gross sales, and that would be compared with whatever is claimed on the application, is that correct?

A Yes, that's correct. In other words if you had an applicant come in, and this was a non-seasonal-type business, you would have a beginning inventory and an ending inventory. Let's just assume that maybe those inventory figures were in the twenty thousand dollar bracket. If you look at an applicant's application and you saw on there that he was requesting $50,000 for inventory, you would have reason to question that figure.

Q So if the applicant was requesting more than what appeared on his tax return, you would have a question about it?

A That's right.

Q In terms of inventory, if someone claimed an inventory loss of $50,000, in your experience, would it be reasonable to have sales of $50,000?

A No. In a case like that, what we would do, we would look at the tax return and we would look at the applicant's claim. We can usually determine what the inventory turnover is, in other words, how many times a year would that inventory turn over. We had various guides which we could use for that. Robert Morris Associates is one.

Q And this is a standard --.

A Yes, it is a standard. It is an accepted procedure.

Q It is a reference manual, is that right?

A Yes.

Q What were the amounts of gross sales claimed on Mr. Gill's application?

A Gross sales for 1970, $181,294.22.

Q That was 1970?

A Yes.

Q Was the gross sales stated there for 1971?

A Yes, '71. The files here show $184,483.18.

Q Given those gross sales, would the claim of inventory of a twenty-five thousand dollars inventory loss be out of line?

A No, I don't believe so in this instance here.

Q And would gross sales of one hundred and eighty thousand dollars plus, would a claim of machinery and equipment in the amount of $60,000 be unreasonable?

A No. We could expect that that figure might be realistic.

Q After evaluating the loan application as you have described to the members of the jury, is there anything else that you would do to try to verify what kind of business Mr. Gill had?

A Yes. We would want to see copies of the tax returns.

Q You have described that previously how you refer to those?

A Yes.

Q Did you go to Dun & Bradstreet for a credit report or to anybody to indicate and to verify any figures?

A When the tax returns were submitted, I compared those with the statements that Mr. Gill's wife gave to Dun & Bradstreet.

Q Do you have a Dun & Bradstreet report there?

A There should be one in the file here. (Pause)

Yes, we have two Dun & Bradstreet reports.

Q And you have one dated what date?

A Well, we have one here, and the date of the report is October 6, 1972. Now the date we received it is February 2 of '73.

Q And you know that you received it on that date because it is stamped on there?

A Yes.

Q Is it the usual practice to stamp copies, every copy received by the Small Business Administration?

A No. Most of the copies are stamped when they come in through the mail itself. If we have somebody bringing in a particular item that we may have requested, it is

not normal that we stamp the thing.

Q How many stamps do you have, or did you have, at the Small Business Administration office?

A Well, I think back then we were fortunate enough to have two.

Q Where were they kept?

A They were kept by the mail girls, the girls in charge of taking care of incoming mail.

Q They would open the mail and stamp it?

A They would open the mail and put the date stamp on it.

Q Would the fact that there is a stamp on that indicate to you that it came through the mail?

A Yes.

Q Is there anything in that Dun & Bradstreet report that differs from the information that is on the loan application of Mr. Gill?

A Yes.

MR. LEVY: I object to the use of a Dun & Bradstreet report as a source, as triple hearsay, and really, it is not the source of any evidence.

THE COURT: Objection is overruled.

Q Were there differences on that report?

A Oh, yes.

Q What does that report say?

A Well, there were some distinct differences. May I read the very top portion of the report?

Q Yes. That is in evidence so you may read it.

A All right. The report goes on to say: "On October 3, 1972, Mrs. Thomas Gill, wife of owner, stated that approximately $6,000 in damages were sustained in a recent flood. An SBA loan has been applied for. Due to recent damages and an absence of detailed information, no estimate of overall condition is possible at this time. Sales are estimated at $70,000 annually."

Q Now the damage of $6,000 that appears on there differs substantially from the $60,000 claimed, is that right?

A Oh, yes, quite a big difference.

Q That doesn't mean that you rely on the Dun & Bradstreet report, does it?

A Certainly not.

Q And they could have made a mistake and it meant $60,000 but it only states six?

A More than likely. Mrs. Gill may have underestimated the damage amount at that time.

Q How about the sales figure of $70,000? Does that corre-

spond with information that you received on Mr. Gill's application?

A No, no. We talked about roughly an overstatement of around $110,000, $111,000.

Q Based on the information that you had at that time, was there a request that went out for the copies of Mr. Gill's tax returns for 1970, 1971?

A Yes, several requests.

Q And were those ultimately brought to the office of the Small Business Administration?

A Yes, they were.

Q And do you know when that was?

A Well, they were brought in, I believe, the first week of January, '74.

Q Did there come a time during the month of January, 1974, that you reassigned that loan file to another officer at the Small Business Administration?

A Yes.

Q And who did you assign it to?

A I gave the file to Mr. Cristofaro.

Q And he was then supposed to re-evaluate the file, is that correct?

A That's correct, based upon the new information that was

submitted, the tax returns that were brought in.

Q Mr. Garrity, were you present when the returns were submitted to the Small Business Administration, the 1970, '71 returns of Mr. Gill?

A Yes.

Q Did you take them personally?

A No. I didn't take them personally. The request came in that I go out and speak with Mr. Conlin who had the returns, and I happened to be very busy at that time, and I asked Mr. Quigley if he would go out and take care of getting the returns for me.

Q And did he do that?

A Yes.

Q Did you get the returns?

A Yes.

Q What, if anything, did you do with them?

A Well, I reviewed them, naturally, and I compared them with the information that we already had in the file, and I also compared them with the copies of the Dun & Bradstreet reports that we had. And I noticed, you know, the discrepancies in what was reported to Dun & Bradstreet and what was reported to us, and I made note of this to Mr. Cristofaro when I gave him the returns

in the file.

Q Did you make any notations in the file underlining any particular --

A Oh, yes. What I did, when they came in, there was such a big difference there that normally when I noticed something like that, so if I happened to be reviewing the file again, I would mark it in some way so that stands out. And what I did here, as usual, I underlined the information that I felt was important, you know, the difference between what was submitted and what was reported back in '72.

Q After you turned over the file to Mr. Cristofaro, did there come a time that you ever again were present with Mr. Conlin, Mr. Gill and Mr. Cristofaro?

A Yes.

Q When was that?

A Well, that was the middle part of January.

Q And what were the circumstances of that meeting?

A Well, Mr. Conlin and Mr. Gill came in so that they could sit down with Mr. Cristofaro and review the entire loan application and go over the figures that were submitted. There were several questions that we had, and we felt that the best way to get answer to these questions and

to expedite the processing of this case so that the applicant could get a loan, that we have him come in and take care of everything at that time.

Q And were you in Mr. Cristofaro's office when Mr. Gill and Mr. Conlin came into that office?

A Well, my office is right next to Mr. Cristofaro's, or was right next to Mr. Cristofaro's. We were separated by a very thin metal partition, a glass plate that went up about this high (indicating), so I was aware of the fact that they were in the office talking with him.

Q Did there come a time that Mr. Cristofaro called you into his office?

A Yes.

Q When was that?

A Well, it was that very same morning after they had gotten into discussing some of these figures. I heard him call me, and I immediately went in.

Q What did you observe when you came into the room?

A Well, as I walked in, and again, it is just around the corner, I was standing in the doorway and Mr. Cristofaro said to me, "Howard, Mr. Conlin has just taken our tax returns and put them in his briefcase."

And Mr. Cristofaro advised him, you know, what

he was doing was unlawful and that he should return them, that they were our tax returns and they couldn't be removed without our permission, and I repeated that.

Q Did Mr. Conlin say anything?

A He never said a word, nothing.

Q And you told him that very fact yourself?

A Yes, I repeated it, you know, several different times because we have enough problems without getting into matters like that.

Q Did he say anything to you at that time?

A No. He began to tear them up.

Q And did you see him actually physically ripping them?

A Yes. You see, I was standing up so you know I was looking down upon everyone else who was seated, and I was looking down and he had them in his briefcase. His briefcase was sitting on his lap, and he had the tax returns inside, and he had his hands in there, and I could actually see him tearing them up in little pieces.

Q After, did you say anything to him when you saw he was ripping these up?

A Yes, I did. I couldn't believe my eyes. I said, "Mr. Conlin, you are destroying property which belongs to an agency of the U. S. Government."

I said, "You must stop this right now."

I said, "You can't come into a government office and take files, take tax returns and put them in your briefcase and start tearing them up."

And I just didn't get any response. He never even acknowledged my presence, and he just kept tearing them up.

Q While you were in the office, did you see Mr. Conlin write anything? Did he write any note to Mr. Cristofaro, or have Mr. Gill sign anything when you were in the office?

A Well, you mean when he was finished tearing up the tax returns or --

Q Go ahead.

A I will start over. He was, you know, as I already told you, I asked him to please --

THE COURT: You have something definite in mind. Call it to his attention.

Q No. I just want to know if you were present at the time that Mr. Conlin submitted a note to Mr. Cristofaro. It is Government's Exhibit G-3A. Were you there when that note was written?

A Yes.

Q So you were present at that time?

A Yes.

Q And do you remember how he gave that note to Mr. Cristofaro?

A He had his legal pad with him, and he wrote out the statement here, and threw it in front of Mr. Gill.

THE COURT: By "this statement," you mean the withdrawal of the application?

A Yes, and gave it to Mr. Gill and asked him to sign it.

Q And Mr. Gill signed it?

A Well, after quite a bit of hesitation, you know, he finally signed it. He was sitting there dumbfounded.

Q Did Mr. Gill say anything throughout the period of time you were in there?

A No.

Q After Mr. Conlin was ripping up the tax returns, did he do anything with them?

A Yes. After he had them all ripped up in small pieces, he still had his hands, of course, in the briefcase, and he took the pieces and started stuffing them down in his underwear, and then apparently, they were filled up, or anyway, he started stuffing them in his shirt, putting them in his shirt, with his shirt unbuttoned and putting

them in his shirt.

Q During this period of time did the FBI arrive?

A Yes.

Q And what was Mr. Conlin doing at the time the FBI arrived?

A Well, he was getting ready to leave.

Q How long after you observed Mr. Conlin stuffing the pieces of the tax return into his pants and into his shirt did the FBI arrive?

A Well, it was only a matter of a few minutes. There was no real big delay in their getting over.

Q Was anyone else present in that room or had come into the room other than Mr. Gill, Mr. Conlin, Mr. Cristofaro and yourself?

A Yes, our Branch Manager had just arrived back from lunch.

Q Who was he?

A Mr. McDevitt.

Q And he was present throughout some of this, is that right?

A Yes.

Q And did anyone physically prevent Mr. Conlin from leaving at that time?

A No.

Q Did anyone encourage him not to leave at that time?

A I told him after we had called the FBI that he would have

to wait for them to show up.

Q And what was he doing during this time?

A He was sitting there.

Q And did there come a time that Mr. Conlin got up?

A Yes.

Q What was he doing then?

A Well, apparently at that time when he got up, he was headed out the door, and Mr. McDevitt was coming in from lunch, and I explained to Mr. McDevitt what had happened, and hoping that he could persuade Mr. Conlin to give us back the shreads, and he didn't seem to get anywhere with him, and he told him that unless he returned this information, that he could be expected to be arrested later on in the day, because the authorities had been called.

Q Did Mr. Conlin give you the tax returns at that point?

A No.

Q Did he give you any of the shreads or anything?

A Well, no, but some of the shreads were falling out of his pant legs, and I was walking around behind him picking up the shreads of paper and putting them in an envelope.

Q After you picked up the shreads of paper and put them in the envelope, what did you do with them?

A Well, I held onto them, and about that time, thank heavens, the FBI agents arrived.

Q Did you turn those papers over to the FBI, the shreads that you had picked up?

A Yes, but I had more to pick up because as they were talking with him, he was walking around in the office, and the papers were falling out on the floor, and I was right behind him picking them up.

Q You mean after the FBI agents arrived, he was still walking around the office?

A Yes.

Q And the papers were still falling out?

A Yes.

Q Was he doing anything with his hands at that time?

A Well, apparently he still had some left in the briefcase, and it looked to me like he was trying to dispose of them somewhere, trying to find a place to put them.

Q Did there come a time that the FBI placed Mr. Conlin under arrest when you were present?

A Well, yes.

Q And about how long was that after they arrived?

A After they arrived, I would say maybe twenty minutes, fifteen, twenty minutes, somewhere in that period.

Q During this period, this fifteen or twenty minutes after they had arrived, was Mr. Conlin doing anything?

A He sat down. Well, he continued to, you know, trying to destroy this material, and he continued to walk around, and the papers were still falling out. I was running around picking up the papers and finally, one of the agents said they thought it would be best if he just sat down in the chair.

Q And did Mr. Conlin make any telephone calls during this period of time after the agents had arrived, or talked to anybody?

A Yes. They allowed him to call an attorney.

Q Did the agents, either one of the agents, use a telephone from that office?

A Oh, yes.

Q And do you know who they telephoned?

A I believe they called the U. S. Attorney and explained to him what had happened.

THE COURT: In Rochester?

A I believe so, yes.

THE COURT: There was no United States Attorney in Elmira?

A Heavens no. It was a long-distance call. I assume it was

Rochester.

Q Did Mr. Conlin get on the phone at all to talk to the United States Attorney's office, if you know?

A I am not sure. I don't know if he talked to the U. S. Attorney or not. I know he tried to contact his own attorney.

Q After he had sat down and the FBI agent said to stop making the telephone calls, did there come a time that Mr. Conlin was taken to a separate office?

A Yes. He was taken out of our office. It is not too private, and he was taken down the hallway to some other room where they had more privacy.

Q And did there come a time that you turned over the papers that you had been picking up to the FBI agent?

A Yes. I followed him all the way down the hall and kept picking up the papers, and when we got down to the other room, I gave the envelope to one of the agents.

MR. HOULIHAN: Thank you. I have no further questions.

* * * * * *

E S T E L L A R O S S,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mrs. Ross, where do you live?

A 397 Antler Road, Big Flats.

Q And that is down in the Elmira-Corning area, is that correct?

A Yes, between Elmira and Corning, Big Flats.

Q Are you familiar with the defendant, Walter Conlin?

A Yes.

Q And how do you know Mr. Conlin?

A He used to do our income taxes.

Q And how many years did he do your income taxes for you?

A I'm not sure -- quite a few. I'm not sure.

Q Did he do your income tax returns for 1971?

A Yes.

Q Did he do your income tax returns for 1972?

A Yes.

Q And did he do your income tax returns for 1973?

A No.

Q Mrs. Ross, do you recall when you asked Mr. Conlin to do

your 1972 income tax return? Do you recall when that was?

A You mean the exact date?

Q Yes, or about?

A No. I don't know the exact date, but it was maybe the end of January or in February, probably.

THE COURT: 1973?

A No, for '72.

THE COURT: For '72. You don't make your returns until '73.

A We made it in '73 or '72, but I don't remember the exact date.

THE COURT: Yes, I understand it.

Q Did you have an appointment with Mr. Conlin to go and talk with him about your tax return?

A Yes. That is, we made an appointment. We called up and came down that day.

Q When you went to see him, did you bring any records with you?

A Yes, my papers.

Q Do you have those papers with you?

A I really don't know exactly which papers you want.

Q Did you prepare a work sheet?

A Yes. I do that every year, but this is just for my own

use. I don't make the whole tax out or nothing, just to put it down so I don't forget, you know, what to ask him, what to put down or my interest on the house, and things like that.

THE COURT: Let's get a question here.

MR. HOULIHAN: May I have your work sheet?

(Government's Exhibit 15 marked for identification.)

Q Mrs. Ross, I show you Government's Exhibit 15 marked for identification, and you said it was a work sheet that you prepared, is that correct?

A Yes, I did that.

Q Did you bring that with you the night that you spoke with Mr. Conlin?

A Yes.

Q Did you give him information concerning your 1972 tax return from that work sheet that you had prepared?

A Yes, plus questions that he asked me.

Q Plus you responded to questions that he asked?

A Right.

MR. HOULIHAN: Would you mark

this for identification?

(Government's Exhibit 16 marked for identification.)

Q I show you Government's Exhibit 16 marked for identification, and there are two signatures that appear on this, and it appears to be a tax return in the name of Lewis and Estella Ross.

A Yes, that is ours.

Q Is that your tax return?

A Yes.

Q For 1972?

A Yes.

THE COURT: What year?

A For '72.

Q And those are your signatures there?

A Yes, that's right. That is my writing.

Q Do you recall at the time that you met with Mr. Conlin how long you met with him?

A Well, not exactly. I mean I didn't time myself right to the minute.

Q You don't have to give it to me exactly, but do you know about how long you were there?

A I know it was less than an hour in the office, but I

couldn't say exactly right to the time. I wouldn't know.

Q During that period of time did you discuss with him how much money you had paid in medical expenses?

A Yes. I had this all down.

Q And how much did you tell him at that time?

A (No response.)

THE COURT: Did you tell it to him, or did you have it down on a paper and give him the paper?

A I put it on here so I don't forget how much it is, so I read from that. I didn't give him the paper.

Q How much did you tell him you paid Dr. Bresloff?

A Twenty dollars. I think that is the one. That was twenty dollars.

Q Is that Dr. Jesse Bresloff?

A Yes, that was twenty dollars.

Q And that is what you told Mr. Conlin on that night?

A That is what we paid.

Q Did you tell him on that night that you paid twenty-five dollars to Dr. Darling?

MR. LEVY: I object.

THE COURT: I will sustain the objection. That is leading.

MR. HOULIHAN: All right.

THE WITNESS: No, I didn't.

MR. HOULIHAN: Please don't answer a question when an objection is sustained.

Q I show you again a tax return for 1972 and call your attention to Page 2 of that return, which is the itemized expense account, and under that section, it says, "Dr. Bresloff, Dentist," and how much is shown in that return?

A $120, but it was twenty dollars.

Q It was not $120?

A No. It was twenty dollars.

Q Did you tell him that it was $120?

A No, I did not. I don't know where he got the figure.

Q There is a medical expense here to Dr. Daley of $25?

A That is supposed to be Dr. Darling. I didn't tell him that. That was the year before. Because after I went home, after I checked it, and we had that on for the year before, for the '71 tax.

Q Did you tell Mr. Conlin on the night that you met with him to fill out your '72 tax returns that you paid Dr. Darling $25?

A Not for 1972, but I did that for the 1971 tax, and he did

have it on the '71 tax.

THE COURT: When you were preparing your 1972 tax return, you wouldn't be talking about your expenses in 1971?

A No, I didn't. That is why I don't know how it got on there. It must have been a mistake by somebody else. I didn't put it down there. I didn't tell him that, no.

Q So you didn't tell him you paid twenty-five dollars in 1972?

A No.

Q And on your 1972 income tax return, there is a Dr. Ober, of $70, is there not? Now this is on the return here (indicating).

A That is probably from the same year before, because I didn't have it on here, so I didn't tell him that. I've got Genesee Hospital, and I've got --

THE COURT: If you want to know what is on the return, all you have to do is introduce the return in evidence. You don't have to ask her what is on it.

MR. HOULIHAN: I offer G-15 and G-16.

MR. LEVY: I object to G-15.

There is nothing here that shows that this was given to the preparer of the taxes.

THE COURT: I will sustain the objection.

MR. LEVY: I have no objection to the return, the other one.

THE COURT: Government's Exhibit 16 is received in evidence.

(Government's Exhibit 16 marked in evidence.)

Q Mrs. Ross, did you give your work sheet to Mr. Conlin the night that you had him fill out your tax return?

A No, and I don't even remember if he looked at it, because I had that from, you know, on my side of the table, and I kept scratching that off.

Q Didn't you give him some papers that night?

A Why, just my receipts I showed him. I brought my W-2 forms. I had all that.

THE COURT: That shows your wages?

A Yes, or my income.

Q Did you give him and leave with him that night any items, any receipts, bills?

A No, I took those back with me.

Q And your work sheet as well?

A As well as the work sheet. That was mine. I kept that with me.

Q Who put the red marks on that work sheet?

A I did. I had a red pencil, and I kept crossing them off. I just did that so I don't forget, you know, for my taxes, what I want to know, and some of these I didn't put no figures on because Mr. Conlin filled those in, and the only ones --

THE COURT: All he asked you is who put the red marks on there. That is all he wants to know.

A Oh, I did. They are my checkmarks.

Q Did you put those red marks on at the time you were talking with him?

A Yes, at the time, right.

Q That was for your information so you knew what you told him?

A For my information so I would check it off, yes.

Q Did you tell Mr. Conlin on the night that he was to fill out your return that you spent in 1972 $70 to Dr. Ober?

MR. LEVY: I object to it. It

is leading.

THE COURT: I will sustain the objection. It is plainly leading.

THE WITNESS: No, not --

THE COURT: Just a moment.

MR. HOULIHAN: When a person objects, please don't answer until the judge rules.

THE WITNESS: Okay. I'm sorry.

Q Did you pay any bills to Dr. Ober in 1972?

A No.

Q Did you have any expenses to Dr. Ober in 1972?

A No.

Q What, if anything, did you tell Mr. Conlin about any monies that you gave to Dr. Ober during 1972?

A We didn't even talk about Dr. Ober, not at that year.

Q What, if anything, did you tell Mr. Conlin about payment to Dr. Darling for the year 1972?

A There was no talk about it at the time because I didn't have the bill for it.

Q What, if anything, did you tell Mr. Conlin regarding any payments that you made during 1972 to Dr. Bresloff?

A Twenty dollars that I paid for my son, Jimmy's, dentist.

He was in college at the time, and I paid the dentist bill.

Q The return here shows $120 for that payment to Dr. Bresloff.

A As I said, I don't know how that got on there, because I had a receipt for twenty dollars --

THE COURT: Just wait until he asks you a question.

Q Mrs. Ross, did you have any expenses during 1972 for interest on installment purchases?

A Only the house payments that we made.

Q Only the house payments?

A Yes. We are still paying on it.

Q And how much interest did you have for that year?

THE COURT: You mean interest on a mortgage?

Q On the mortgage?

A On the mortgage, that is the only thing we have, $946.41 interest. You see, that is why I have that on there.

Q I show you your income tax return, and that figure is the same figure on there, $946.41, is that right?

A That's right.

Q It also shows installment purchases with an amount of $94.12. Did you tell him --

A No. I don't know what that is all about. I just found

that out last year sometime, that it was on there. I didn't know it was on there.

Q You didn't have any expenses from installment purchases?

A We don't charge anything no place. I never charge -- just the house payment. I don't have any charge accounts, and I don't believe in it. It is something I don't do.

THE COURT: Will you please wait until he asks you a question. He will find enough to ask you.

A I don't know how to answer. I'm sorry, sir, but I have never been in court.

THE COURT: Will you just please wait until he asks you to answer a question.

Q Mrs. Ross, was your home damaged by the flood at all?

A Yes, it was, a lot.

Q And did you make an application to the Small Business Administration to be reimbursed for the loss that you suffered?

A Yes, I did.

Q And how much was that loan application for?

A Well, we got $2,600 at the time, and then they told us that if there was more, we could apply for more, which we did later, but then after when we did, they refused us. They

gave us a letter that they didn't give us the rest of it. So I did tell Mr. Conlin about the damage, and in fact, we are the ones that really got gypped on that, because there was a lot more damage.

THE COURT: Would you please just answer the question that he asked. Don't volunteer any information.

A I am not.

THE COURT: Because he is asking you what he wants to know.

THE WITNESS: Yes.

THE COURT: There may be a lot of things about this you want to tell, but he doesn't want to know this.

Q You applied for a loan of $2,700?

A Twenty-six hundred we got. That is what they gave us.

Q When did they pay you for that?

A I don't remember the date exactly.

Q Was it before you had your income tax return filled out?

A Yes, before, but I don't know exactly the date.

Q And did you tell Mr. Conlin how much money you had received from the Small Business Administration?

A Yes. I brought the paper with me.

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Q At the time that you went to Mr. Conlin to fill out your income tax return for 1972, did you have a discussion as to the amount of loss that had occurred to your house?

A Not with the figures, no.

Q You didn't talk any figures to Mr. Conlin?

A No, because I did tell him the damage, you know, that I had thought I had at the time.

Q Have you ever had an appraiser at your house?

A No.

Q Did you tell Mr. Conlin at the time that you had a loss of $8,160?

A No. I didn't tell him that, but we did have at the time, you know, the loss was there, but I didn't tell him the figures.

Q You didn't know that at that time?

A I didn't know, no.

Q And you never had an appraiser?

A No.

Q Did you tell him at the time that you received the loan for $2,600?

A Yes. I brought the receipt on that.

Q Mrs. Ross, on your work sheet you have a note "Church, etc. -- contributions," is that in your handwriting?

A Yes.

Q And what amount did you put next to that?

A I don't have no amount on here, because I don't know exactly.

Q Did you discuss how much money you gave in contributions with Mr. Conlin that night?

A Not right to the dollar, no. I left it up to him, and we felt --

MR. LEVY: This is outside the indictment, Your Honor. It has nothing to do with it.

THE COURT: All we want to know is if you talked about it. Now he didn't ask you what you said. Did you talk about it?

A Yes, we talked about it.

Q And did you tell him any specific amounts that you gave to any particular charities or churches?

A No. The only amount that I had had at the time was --

MR. LEVY: I object, Your Honor.

THE COURT: I will sustain the objection.

Q Did you give Mr. Conlin any information regarding any

charitable contributions?

A Yes.

Q Do you know what the total of those charitable contributions were?

THE COURT: You are not asking what she told Conlin, but you are asking what the total of her contributions were.

Q I would like to know what amount you told Mr. Conlin that you gave to churches and charities?

A The only figures that I told him was what we had on that form. What do they call it now -- on my husband's pay return there.

Q You mean payroll deduction, like the Community Chest?

A Yes, only what they deducted off in the factory.

MR. LEVY: Your Honor, may it appear on the record that there is no claim here in the indictment or anything else concerning charitable contributions in regard to this lady's tax?

MR. HOULIHAN: Your Honor, the indictment speaks of several different areas. This is on the same tax return and is a like figure. It is intended to

show the motive "intent" pursuant to the Federal Rules of Criminal Procedure, the new rules, evidence of other acts with regard to the same return. I would be happy to supply that particular citation to the Court.

THE COURT: Let me see the particular part of the indictment that you think makes this evidence admissible. Call my attention to it.

MR. HOULIHAN: Your Honor, the particular wording in the indictment does not mention charitable contributions. My claim for relevancy in admissibility is evidence of other like actions at the same time which would tend to prove the motive "intent."

THE COURT: I will sustain the objection.

MR. HOULIHAN: Your Honor, may I have a final ruling on this? I refer you to Rule 404, just to say what the basis is of my --

THE COURT: Are you going to finish with this witness tonight? And the reason I would like to is because she is from out of town. But I can't do it if you are going to bring in all these side matters here.

MR. HOULIHAN: Your Honor, I believe the testimony is crucial to my case.

THE COURT: It may be very crucial to your case, but it is now four thirty, and this woman is from Elmira, and if you want to bring her back tomorrow, all right, I will do that.

Q Referring to the document that is in evidence, G-16, your 1972 tax return, did you provide the information that appears on Schedule A, Line 18, "Contributions" to Mr. Conlin on the night that he filled out your tax return?

MR. LEVY: I object, Your Honor.

THE COURT: Just a moment. Would you read the question again, please?

(Last question read.)

THE COURT: I will sustain the

objection, and I will receive evidence of what exactly she told him relative to that matter. But you are asking her to conclude what information is required for that return.

MR. HOULIHAN: Relative to the matter of the indictment.

THE COURT: I understand.

THE WITNESS: I guess I don't understand it.

Q Mrs. Ross, did you make a contribution to the Child Church of $36 in 1972?

MR. LEVY: I object to what she made. It is immaterial as to what she made.

THE COURT: I will sustain the objection. The question is what information she gave to Conlin and not what the fact was about what she paid, or in contributions.

Q Did you tell Mr. Conlin that you made a contribution of $36 --

THE COURT: That is plainly

leading. I can tell the way you start. If she told him something about that, ask her what she told him.

Q What did you tell Mr. Conlin with regard to any amount of money that you gave to the Child Church in 1972?

A I told Mr. Conlin that I was going to leave it up to him, because he knows, and he is probably paying the same thing. I told him that there was people coming to collect for all kinds of organizations, you know, and this and that and the other, all the time. And he is donating money for everything in the factory, my husband, but I didn't keep track of all the receipts, and I think --

THE COURT: Did you tell him what you paid?

A I didn't give him no figures, no. But I did tell him that we did contribute, and we still do.

THE COURT: But you didn't tell him how much you contributed?

A No, not exactly.

THE COURT: Well, he wouldn't know how much you contributed unless you told him, would he?

A No, he wouldn't, but he was right on that anyway.

THE COURT: What?

A But he was right.

THE COURT: That doesn't make any difference. We are not concerned with that. We are concerned with what you told him relative to that matter.

Q What did you tell him that you gave to the Methodist Church? What, if anything, did you tell him you gave to the Methodist Church in 1972?

A Well, we all went to church, and I told him there were three or four of us at the time, and we donate money all the time to the basket, but I didn't give him no special figure, because I didn't know. I told him I didn't know.

Q You didn't give him any figures?

A No, but we do give money all the time.

Q What, if anything, did you tell Mr. Conlin that you gave to One Great Hour of Sharing?

A Like I said, I didn't mention no figures.

Q What, if anything, did you tell Mr. Conlin that you gave to the Worldwide Communion?

A I didn't mention no figures for none of that. I didn't tell him no figures.

Q Mrs. Ross, you appeared before a Grand Jury, did you not,

in September of 1974? Do you remember that?

A Yes.

Q And prior to the time that you appeared before the Grand Jury, did you receive a telephone call from Mr. Conlin?

A No, I don't remember.

Q You don't remember?

A No. That was a long time ago.

Q Did you have a meeting with Mr. Conlin after the Internal Revenue investigation started?

A No. I seen him once, then, but I don't know whether it was after or before.

Q Let me have you read a portion of this to yourself to refresh your recollection. It is on Page 11.

(Pause in the proceedings.)

THE WITNESS: That is what you have got on here, and that's what it's all about.

Q Did you meet with Mr. Conlin sometime after the Internal Revenue Service investigation began?

A Yes. My husband and I went down to his office one night.

Q Did he say something about the tax returns and what you should say at that time?

MR. LEVY: I object. This is

way after the event.

THE COURT: What?

MR. LEVY: This has nothing to do with the event or the preparation of the return or anything else.

THE COURT: How do I know whether it does or not. I haven't heard what the testimony is yet. I can't anticipate what she is going to say.

Q Did he say something about the tax returns at that meeting and what you should say?

A He just said to say that everything is the way he got it on the paper, and that is it.

Q And is everything the same as it is on your tax return?

A Well, at that time I thought it was, but then later I found out it wasn't, these few things that we went over.

MR. HOULIHAN: Thank you. I have no further questions.

* * * * * *

L E L I A A. M I N I E R,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mrs. Minier, you are from Addison, New York, is that correct?

A Yes, I am.

Q And you are married to Casper Minier?

A Yes, I am.

Q During the year 1973, the early part of 1973, you went to Mr. Conlin to prepare your 1972 tax return?

A That's right.

Q And do you recall speaking with him about charitable contributions at that time?

A I gave him the charitable contributions that I kept a record of.

Q Did you have a work sheet prepared when you went into Mr. Conlin's office?

A I keep a notebook, and I had made a sheet.

Q You keep a notebook at home?

A I keep a notebook at home of our deductions. I am busy, but I do the best I can.

Q And did you prepare a worksheet for this particular year of 1972?

A Yes, I did.

Q Do you have that with you?

A Yes, I do.

MR. LEVY: I object to the sheet being used unless the sheet was given to Mr. Conlin.

THE COURT: Objection is overruled. She might have used it in another way than giving it to him. She might have had it in front of her and read it off. The objection is overruled.

MR. HOULIHAN: Would you mark this for identification?

(Government's Exhibit 23 marked for identification.)

Q G-23 is the worksheet that you prepared and had the night you went to Mr. Conlin's office?

A As far as I know, but things are added, and when we discussed these things, we go over each thing in front of him, and some other things, and some things I put in that I have forgotten.

Q How much did you tell Mr. Conlin you gave to the Methodist Church?

A Here I have $16 --

THE COURT: Not what you've got there, but what you told Mr. Conlin.

A I told him what was on here, I think.

THE COURT: I don't know what is on there, but I want to know what you told Mr. Conlin.

A That is too long ago. I can't remember.

THE COURT: All right. We will leave it that way. We will never know unless you tell us.

THE WITNESS: I can't remember.

Q The information that you gave him, where did you get it from?

A Probably from my paper.

Q And did you have any other reference material regarding charitable contributions other than what appears on your worksheet?

A Only as I said, that we may have discussed things like, "Did you give this?" Or, "Did you give that?" And I may have forgotten them.

Q What did you tell Mr. Conlin that you gave to the Methodist Church in 1972?

A I said we hadn't been attending that church that year very well and giving to the church was quite small that year. We hadn't given as much as in previous years.

Q What did you tell him that you did give?

A I think I told him probably what is on my paper.

Q What is that?

A Sixteen dollars. Probably that is what I told him.

Q What, if anything, did you tell him that you gave to One Great Hour of Sharing?

A I don't have it down.

Q You didn't tell him anything?

MR. LEVY: I object, Your Honor. It is leading.

THE COURT: I will sustain the objection.

Q Did you tell him anything about One Great Hour of Sharing?

A I don't remember.

Q Do you know what One Great Hour of Sharing is?

A It is a church gift.

Q Did you tell him at that time that you gave money to One Great Hour of Sharing?

A I can't remember.

Q How much did you tell him that you gave to Worldwide Communion?

A That I can't remember.

Q Did you tell him anything?

A I don't remember because, as I said, I don't know. We weren't going to church very well that year.

Q How much did you tell him that you gave to the Volunteer Fire Department?

A I said that we gave five dollars.

Q I show you Government's Exhibit 18, which is your 1972 tax return, and I call your attention to Schedule A, Line 18, and particularly to "Church -- Methodist," and it says, "$104." Did you tell Mr. Conlin that you gave $104?

A I couldn't have.

THE COURT: What?

A I couldn't have because we didn't.

Q And I call your attention to that same schedule, "Volunteer Fire Department," as $15, and did you tell him that you gave $15 to the Volunteer Fire Department?

A I have $5. I can't remember, but I have five.

Q What did you tell him that you gave to the Cancer Fund?

A I have nothing down here, but that is one of the donations

that we probably give them and may have forgotten, because they come to the door.

Q And the Girl Scouts?

A It is the same answer. The Girl Scouts always come to the door for collections, but I don't have it written down.

Q And what did you tell him that you gave as your Easter Offering?

THE COURT: To whom?

MR. HOULIHAN: It just says "Easter Offering."

THE COURT: You can make an Easter offering to your wife. Is that what you are asking about?

MR. HOULIHAN: I have no idea.

Q Did you make an "Easter Offering"?

THE COURT: To whom?

Q To a church?

A What I have down for "Church" is what I said, and that is all I have down. And I said that we weren't attending church very regularly. I can't remember. We always do give on any special days that we go to church, and now we are attending church regular, but at that time we weren't, as far as I know, and I don't have anything

written down. And it is too long to remember that. It is too long ago.

Q Did you tell Mr. Conlin that you gave a Christmas Offering, or an Easter Offering that year?

A It is the same answer. I don't know what I told him.

(Pause in the proceedings.)

Q Mrs. Minier, at the time Mr. Conlin prepared your 1973 tax returns, is that right?

A Yes.

Q And after you finished speaking with him about the preparation of your 1973 tax return, did you have a conversation regarding your 1972 tax return?

A I don't know. It was usually so late when we left Mr. Conlin's office at night. It would be midnight, and it is very difficult to remember that long ago what we talked about. We were all tired out.

Q Did you talk to Mr. Conlin at that time about the investigation that was going on regarding your 1972 tax return?

A It might have been mentioned.

MR. HOULIHAN: Would you mark this for identification?

(Government's Exhibit 24 marked for identification.)

Q Mrs. Minier, I would like you to read this statement to yourself, please.

A (Witness complies.)

Q Do you remember what you told Mr. McIntyre and Mr. Toro at the time that you signed this statement?

A That says --

THE COURT: Never mind what that says.

THE WITNESS: I can't remember. My memory isn't that good.

Q Do you remember Mr. Conlin telling you not to sign the statement?

MR. LEVY: Wait a minute. I object. She said --

THE COURT: I will sustain the objection.

Q Does that refresh your recollection as to what you told the agent at that time?

A No, because it has been several years since then. I can't remember that long ago. I have many things to remember in between that time. I just don't remember. I must have said it if it says so there, but I don't remember it.

Q But you do say that you must have said it?

A That is what that says.

Q And did Mr. Conlin tell you --

MR. LEVY: I object to the use of that statement.

THE COURT: How can I tell what the question is unless I hear it? He might have told her to come back next week.

Q You appeared before two agents of the Internal Revenue Service along with George Welch and Vincent Welch, your attorneys, is that correct?

A That's correct.

Q And that was on January 23rd, 1974?

A Yes.

Q And subsequently that interview was tape recorded, is that right?

A Yes.

Q And that was typed up, and subsequently, it was brought to you for your signature, is that right?

A That's right.

Q And is that your signature that appears on there?

A Yes, it is.

Q And I ask you, did Mr. Conlin ask you not to sign this

statement?

A I don't remember whether he asked me not to. When they came we signed it, because we made the tape.

Q Did Mr. Conlin tell you that at the time you signed your income tax return for 1972 that you did so under penalties of perjury and that if you signed the subsequent statement that you would be admitting perjury?

MR. LEVY: I object, Your Honor. It is not material to these issues.

THE COURT: Objection is overruled.

A I don't remember what Mr. Conlin said. All I know there is a lot of discussion when we have our tax made.

THE COURT: What did you say?

A When we have our tax made, we talk a lot.

THE COURT: This wasn't talking about making a tax return.

A No, I know.

THE COURT: This was an investigation by the Internal Revenue Department.

A I know.

THE COURT: What is the question?

Q Did Mr. Conlin ask you not to sign that statement?

MR. LEVY: I object. That was

asked and --

THE COURT: Objection is overruled.

MR. LEVY: And she said she didn't remember.

THE COURT: She may remember now.

THE WITNESS: I can't remember what he said. We signed it.

Q And you signed it on whose advice?

A I signed under my own advice.

Q Did you contact your attorneys and ask them whether you should sign this?

A Mr. Welch told us to make the tape. They said we had to make the tape.

Q And did you sign it on the advice of your attorney?

A We signed it under the advice of Mr. Welch. I don't remember which "Welch" it was, because they are not our attorneys -- only they were at that time.

MR. HOULIHAN: Thank you. That is all I have.

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J A N E L A M B,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mrs. Lamb, where do you live?

A In Corning, New York.

Q How long have you lived in Corning?

A Since 1941.

Q Do you know the defendant, Walter Conlin?

A Yes, I do.

Q And did he prepare your income tax returns for you?

A In what year?

Q How many years did he prepare your income tax?

A I think we started in 1957, as near as I can recall.

Q Did he prepare your returns for the year 1972?

A Yes, he did.

Q Did he prepare them for 1973?

A No.

Q At the time that you had your 1972 income tax return prepared by Mr. Conlin, did you make an appointment with him?

A No, I did not.

Q You just went in to see him?

A No. I just took my papers and left it with the secretary.

Q You took your papers?

A I took my worksheet papers that I had done in previous years and left them.

Q You left them with the secretary?

A Right.

Q And did you have any conversations with Mr. Conlin at that time?

A No, I did not.

Q Do you have your work papers with you?

A Yes, I do.

Q And you gave him all this material right here?

A Right.

MR. HOULIHAN: Would you mark this for identification, please?

(Government's Exhibit 25 marked for identification.)

Q Mrs. Lamb, I show you G-25 marked for identification, which you previously identified as the worksheet that you gave to Mr. Conlin's secretary, is that correct?

A Right.

Q And that is the information that you gave him to prepare your 1972 tax return, is that right?

A Yes, it is.

Q And did you talk with Mr. Conlin when you dropped the worksheet off at his office?

A No, I did not see him.

Q You just gave it to his secretary?

A Yes.

Q Did there come a time that you talked to Mr. Conlin?

A No.

Q Did you come back and get your tax returns?

A Well, yes. He called me when they were prepared to come in and sign them.

Q Did you come in and sign them?

A Yes, I did, my husband and I.

Q Did he say anything to you at that time?

A Nothing, really, regarding the forms --

THE COURT: Did he talk to you at that time?

A Yes.

THE COURT: Or his secretary?

A No. Mr. Conlin had us sign them, right, but in regard to the tax, he didn't talk except to say that my worksheets were complete like they had always been in previous years.

Q Is that the same fashion that you had your previous tax returns prepared?

A Yes.

Q You would just drop them off?

A Drop them off and leave them and wait for the call when they were prepared.

MR. HOULIHAN: Would you mark this for identification?

(Government's Exhibit 26 marked for identification.)

Q I show you Government's Exhibit 26 marked for identification, which purports to be a copy of your 1972 tax return. Is that your signature and the signature of your husband?

A Yes, it is.

Q When you went to pick up and sign the tax return for 1972 at Mr. Conlin's office, did you go over any of the deduc-

tions on this tax return?

A No. We went over nothing. We just signed them.

Q Did Mr. Conlin ask you for any additional information other than what appeared on your worksheet?

A No.

Q Mrs. Lamb, did you tell Mr. Conlin how much money you paid for health insurance?

A I didn't tell him anything. I had it on my worksheets.

Q What appears on your worksheet for medical expenses?

MR. LEVY: I object. It speaks for itself.

THE COURT: I sustain the objection until you offer it in evidence.

MR. HOULIHAN: I will offer Exhibits G-25 and G-26.

MR. LEVY: May I ask a preliminary question, Your Honor.

THE COURT: Go ahead.

VOIR DIRE EXAMINATION

BY MR. LEVY:

Q In regard to G-25, which are your notes that you say you left with Mr. Conlin's secretary, when you left it, did it have these adding machine tapes on it?

A Yes, I believe those are my own.

Q Those are yours, and you did those, and they were on it when you left it?

A (Shaking head.)

Q Your answer is "yes"?

A Yes.

Q And this is exactly in the same condition that you left it when you left it with the secretary?

A Nothing has been added or changed, no. I haven't changed nothing.

MR. LEVY: All right. I have no objection.

THE COURT: They are received.

(Government's Exhibits 25 and 26 marked in evidence.)

DIRECT EXAMINATION CONTINUED

BY MR. HOULIHAN:

Q Mrs. Lamb, what appears on your worksheet with regard to health insurance?

A There is Blue Cross, $68.25 quarterly for a total of $273, and $50 for health insurance at college for my daughter. And that appears to be it on the health insurance.

Q And how much did you have with regard to medical and dental

expenses, total?

A Well, I have a total for medicines and drugs, but the dentist and doctors, I have itemized. I do not have a total on that. Do you want those separately? I have a total on th edicines, drugs, prescriptions, and so forth.

Q And the medicines and drugs, were these all prescriptions?

A You know, they were drugs.

Q And some were prescriptions?

A Some were prescriptions and some were drugs.

Q And some were for aspirins and cold tablets?

A (No response.)

THE COURT: Non-prescription drugs?

A Yes, medicines. I had the receipt from the drug store, you know, as being deducted, but I did not give those receipts to Mr. Conlin. I just gave him these worksheets, and that was a total. Did you want the total amount?

Q Yes.

A It is $295.

Q And that was $295 that you had on your worksheet, is that right?

A Right.

Q Did you tell him how much you paid, or do your worksheets tell how much you paid for State and local gasoline taxes, or how many miles you drove that year?

A Yes. My worksheet has total mileage.

Q And how much was that mileage?

A Thirteen thousand eight hundred and seventy-eight miles.

Q And that is on two cars, is that right?

A Two cars, right.

Q And that is the only information that you gave him with regard to that mileage, is that right?

A Just the total mileage. I took the readings off the speedometer, you know.

Q Right off the car?

A Right.

Q During the year 1972, does your worksheet show whether you had interest expense?

THE COURT: We are not talking about any year except 1972, so far.

THE WITNESS: All right.

Q Does it show anything about interest expense for installment purchases?

A Yes. I have three items down here.

Q And what is that?

A Mobil Oil Corporation, $3.51; BankAmericard, $1; and Penney's, $1.

Q Is there anything on there for interest on installment purchases for $92.12?

A No, just those three items.

Q Is there anything on there for interest paid to Marine Midland, on the car?

A No, there is not.

Q And did you pay anything to Marine Midland Bank in 1972 for the car?

A No, I did not.

Q That car was, in fact, paid off, was it not?

A It was paid off in the previous year.

Q And your worksheet shows $1 for BankAmericard?

A One dollar for finance charge, yes.

Q I call your attention to Government's Exhibit 26 in evidence, which is your tax return for '72, and under "Interest expense," it has got "home mortgage" of $46.23?

A $46.23.

Q And then it has "Installment purchases," and you have already testified that you don't have anything on there for "Installment purchases"?

A No, I don't.

Q And do you have something at Sears of $18.40?

A No.

Q And the Mobil Oil Corporation was $3.51?

A Yes.

Q Now BankAmericard on your tax return, it shows $101. Is that what appears on your worksheet?

A That is one dollar.

Q And with regard to Marine Midland Bank, there is nothing on your worksheet that says you paid interest of $123.14?

A Right.

Q With regard to charitable contributions, does your worksheet show what charitable contributions you had?

A Yes, it does.

Q What was the total of your charitable contributions?

A $83.60.

Q And I show you your tax return for 1972, Government's Exhibit 26 in evidence, and it is Schedule A, which lists contributions, and the total here is $258.60. Is there anything on that worksheet that says you gave $258.60 to charities?

A No, there is not, not on my worksheet.

Q Is this your handwriting, or your husband's handwriting on Schedule A here?

A No.

Q Do you know whose handwriting it is?

A No, I don't.

Q Is there anything on your worksheet that shows a miscellaneous deduction to the Northside Business Club?

A No, I have not.

Q Is there anything in your worksheet that shows luncheon meetings for the Northside Business Club?

A No.

Q I show you your tax return for 1972, and it says "Northside Business Club, $30." Did you tell Mr. Conlin that you gave $30 to the Northside Business Club?

A I didn't converse with Mr. Conlin at all.

Q And "Northside luncheon meetings" of $73.50?

A No.

Q Now in any prior years, did you converse with Mr. Conlin concerning your tax return, or did you give him the worksheets as you did in 1972?

A Well, I believe when we first started with him, and as I say, we started back in 1957 when we owned a business, and then we would be called in and converse, but in recent years previous to '72, we did it the same way. I would just leave the worksheets. I don't recall the last time

that we did, you know, discussed it, but as I say, there were some times that he would in some previous years, but nothing at all in '72 or '71.

Q How about '71 or '70?

A Or '71 or '70, that I can recall.

Q Mrs. Lamb, did you [illegible]ur husband receive any letters from Mr. Conlin dur[illegible], say, December of 1973 through January of 1974?

A We received some. Now I'm not sure of the dates.

Q Let me show you Government's Exhibit 20 in evidence (indicating). Did you receive that letter from Mr. Conlin, a letter like that?

(Letter handed to the witness.)

A I can't say for sure, because I will admit I received some letters, and I started off reading them, but I didn't continue, because I didn't feel they pertained. Many of them were on the flood, and SBA loans, and so forth, which we did not have, so to be truthful, I just disregarded the letters, because I didn't feel that they pertained. They were not made out to our name like it would be like that, "Dear Client," and I felt it was nothing that concerned me, so I couldn't truthfully say whether I did or did not receive one like that.

Q Do you have any tax training?

A No, I don't.

Q And why do you go to Mr. Conlin to prepare your tax return?

MR. LEVY: I object.

Q Why did you go?

A Because I had no tax training. I wanted someone to do our taxes.

Q And you depended on him, then?

A Yes.

MR. LEVY: I object to it as leading.

THE COURT: I sustain the objection.

Q When you signed the 1972 tax return, did you read it over?

A No, I did not.

MR. HOULIHAN: Thank you. I have no further questions.

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A D R I A N V A N A L S T I N E,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mr. Van Alstine, where do you live?

A R. D. 2, Beaver Dams.

Q That is down in the Elmira-Corning area?

A It is between Corning and Watkins Glen.

Q And do you know the defendant, Walter Conlin?

A I do.

Q And did he prepare income tax returns for you?

A Yes.

Q And how many years did he prepare your income tax return?

A I can't be sure because there was a man by the name of "Dobromil," or something like that, in Corning, a Federal man, and from up until the time when Conlin started, he made out my tax.

THE COURT: All we want to know is when Conlin made out your income tax returns.

Q Do you remember about the year that he began making them out?

A It might be around '46, somewheres in there.

THE COURT: What particular year are you interested in?

MR. HOULIHAN: I wanted to work up to it, Your Honor.

Q Did he prepare your income tax return for 1971?

A He did.

Q And how much did he charge you to prepare that income tax return?

A $137.

Q That is '71 or '72?

A That is '72.

Q How about the year before? How much did he charge you the year before?

A Well, I believe it was $30. I couldn't be sure.

Q Did he prepare your returns in 1973?

A No.

Q Now I'm referring specifically to your 1972 return. When you had that return prepared, did you go to Mr. Conlin's office?

A Yes.

Q And do you remember about when that was?

A No, I don't.

THE COURT: It had to be after 1972, didn't it?

A That's right.

Q It was in the early part of 1973?

A Probably in February or March, somewhere around there.

MR. HOULIHAN: Would you mark these for identification?

(Government's Exhibits 27 and 28 marked for identification.)

Q Mr. Van Alstine, I show you Government's Exhibit 27, which appears to be an income tax return in the name of Adrian and Edna Van Alstine. Is that your signature on there?

A It is.

Q And is this your tax return for 1972?

A Yes.

MR. HOULIHAN: I offer G-27.

MR. LEVY: Your Honor, I have no objection to the income tax return, but there is a whole group of other papers attached to this proposed Exhibit that have nothing to do with it. It has something to do with an income tax audit, which happened after the event, and it is my position it should be deleted.

MR. HOULIHAN: Wait a minute. Don't rip it up until the Court rules.

Your Honor, the return as it appears here is the way the returns are kept on file --

THE COURT: No, it isn't either. A return is filed, and there can't be an audit until the return has been filed.

And the audit takes place sometime after the return is filed.

MR. HOULIHAN: Yes, Your Honor. The only reason those papers were not ripped off is because that is the way the Service Center provides them.

THE COURT: What?

MR. HOULIHAN: That is the way the Service Center provides those returns, just like this (indicating). The Internal Revenue Service provides those returns for trial in this form, because this is the way --

THE COURT: I don't care whether they do or not. That doesn't make it admissible merely because the Internal Revenue shows that --

MR. HOULIHAN: I'm not arguing admissibility.

THE COURT: You are offering it in evidence, and he is objecting to it upon the ground there is something in it besides the return.

MR. HOULIHAN: Your Honor, I'm not permitted to tear things off of things before they are presented.

THE COURT: I am not permitted by law to receive anything except that which is pertinent to the case, either.

MR. HOULIHAN: That is fine. I have no objection to removing those, but I would like to remove them in court rather than in my office. I don't want to be accused of altering anything.

THE COURT: I'm not asking you to remove them in your office.

(Pause in the proceedings.)

MR. LEVY: I have no objection, Your Honor.

THE COURT: It is received.

(Government's Exhibit 27 marked in evidence.)

Q Mr. Van Alstine, when you went to the office of Mr. Conlin, did you bring any papers with you at that time so that you would have information to allow him to make out your income tax returns?

A Yes, we did, tax receipts and a form from where I worked, Corning Glass Works.

THE COURT: That is a wage statement?

A Yes, sir, and bank statements, interest.

Q And you had this information with you?

A Yes.

Q How many times did you meet with Mr. Conlin before your income tax return was finally prepared?

A Just once for preparing, and then we were there to sign it.

Q At the time you met with Mr. Conlin, was there any conversation as to how many miles you drove that year in 1972?

A I can't recall whether there was or not.

Q Did you tell Mr. Conlin how many miles you did drive during 1972?

A I don't remember that, either.

Q I call your attention to Page 5 of your Grand Jury minutes, and would you read that to yourself to see if that refreshes your recollection?

A (Witness complies.)

That sounds about the right mileage.

Q Does that refresh your recollection as to how many miles you told Mr. Conlin that you drove during the year 1972?

A Yes.

Q And how much did you tell him?

A I would say it was probably between fifteen and twenty thousand.

THE COURT: No, he didn't ask you to estimate. He asked you if you remember what you told him about the mileage.

A It says twenty thousand there, so --

Q Is that what you told him?

A Probably.

Q Did you tell him any more than twenty thousand miles?

A (No response.)

Q Did you tell him that you drove fifty-one thousand miles?

A (No response.)

Q Mr. Van Alstine, did you tell Mr. Conlin about any interest that you paid on installment purchases?

A No, I did not.

Q Are you certain of that?

A Yes, I am certain. I know at that time I did not have anything that I was paying time on.

Q You didn't have any credit cards?

A I have credit cards, but I very seldom use them. I don't believe in buying a lot of stuff that I can't pay for.

MR. LEVY: I object to what he believes.

THE COURT: The objection is sustained. Strike it out.

Q In any event, you did not have any interest on installment purchases?

A No.

Q I call your attention to the income tax return under "Interest expense," and under "Installment purchases," $98.14, and did you tell Mr. Conlin that you paid that?

A No, I did not.

Q Did you have a conversation with Mr. Conlin at the time he was preparing your income tax return concerning safety shoes that you bought?

A Not that I can recall, we didn't, no.

Q I call your attention to your 1972 tax return, to the "Miscellaneous deductions --Safety shoes, two pair, $30.72" for a total of $61.44.

Did you tell Mr. Conlin that you paid $61.44 for safety shoes?

A No, I did not. I never paid that much for a pair of shoes.

Q You never paid that much for a pair of shoes?

A No.

MR. LEVY: I object to what he never did.

THE COURT: I will sustain the objection. Strike it out.

Q Did you tell Mr. Conlin that you paid anything for safety shoes at the time of that meeting?

A Not that I can recall.

Q Now Mr. Van Alstine, at the time of your meeting with Mr. Conlin, in order to prepare this 1972 tax return, was there a discussion regarding casualty losses to your house, damage that you suffered to your house?

A Yes, there was.

Q What, if anything, did he say?

A Well, he explained that we were entitled to it, and I objected very firmly about that, because I never had done anything that I didn't believe was right.

MR. LEVY: I move to strike what he believes.

THE COURT: Strike it out.

Q Are those the words that you used?

A Probably not.

Q Was there any amount suggested as to the amount of casualty loss?

MR. LEVY: I object unless we have who suggested --

THE COURT: Let's explore it from the beginning. Did you have a casualty loss?

A I had seepage in my basement from the creek above my house.

THE COURT: There was water coming in?

A Water coming in.

THE COURT: And that was as a result of the flood, was it?

A Right.

Q What kind of a cellar do you have, Mr. Van Alstine?

A It is a dirt cellar with a stone wall.

Q Do you have water in there in the springtime?

MR. LEVY: I object to that.

THE COURT: I will sustain the objection. In the first place, the flood wasn't in the spring.

MR. HOULIHAN: I would like to know if there was any difference between

the flood damage and the normal water seepage.

THE COURT: Why don't you ask him why he had the water in the cellar?

Q Mr. Van Alstine, did your cellar suffer any damage as a result of the flood?

A Well, I would imagine some, yes.

Q And did you tell Mr. Conlin how much damage you suffered?

A No, I didn't.

Q Was there anything mentioned as to the amount of damage suffered?

MR. LEVY: I object unless we have who mentioned it.

Q Did Mr. Conlin suggest any figure to you?

A Yes.

Q How much did he suggest?

A Three thousand.

THE COURT: What?

A Three thousand.

Q And did your property suffer $3,000 worth of damage?

MR. LEVY: I object. It is not what he actually suffered. It is what he told Mr. Conlin.

THE COURT: Objection is overruled.

Q Did your property suffer $3,000 worth of damage as a result of the flood?

A No.

Q What, if anything, did you tell Mr. Conlin about that $3,000 deduction that he suggested?

A I objected to it very firmly.

THE COURT: What did you say?

A I said I didn't want no part of it, and in fact, I wrote a note.

Q Did he encourage you to do it?

A No, I wouldn't say he encouraged me, no.

Q Was there any conversation with Mr. Conlin regarding what would happen if the Internal Revenue Service disallowed that casualty loss?

A I believe I was told that there would be an audit, but that all it would be that I would have to pay the money back.

Q That is what Mr. Conlin told you?

A (Nodding head.)

Q Answer in words so the Reporter can take it down.

A Yes.

Q Did you leave the office after you finished your business

with Mr. Conlin?

A That night when he filed them?

Q No. This was when you were giving him the information to file the return.

A Yes.

Q Did there come a time when you wrote him a note?

A Yes.

Q When was that?

A I imagine it was less than a week after it was filed.

Q I show you Government's Exhibit 28 marked for identification, which appears to be a note dated March 14, 1973. Is that note in your handwriting?

A It is.

Q Is that your signature?

A That's right.

Q Did you give that note to Mr. Conlin?

A I put it in an envelope and left it in his office.

Q And did Mr. Conlin get that note?

A Yes, he got it.

Q How do you know that?

A Because he showed it to me.

Q When did he show it to you?

A (No response.)

THE COURT: Was it when you signed the return?

A I don't remember whether it was when we signed the forms or -- well, it couldn't have been. It must have been later.

THE COURT: Later than what?

A After we signed the forms.

THE COURT: When did you sign the forms?

A (No response.)

Q I show you Government's Exhibit 27, and on here, it says "March 21, 1973." Is that when you signed the forms?

A Yes, right.

Q Did there come a time after your income tax return was filed that you received a letter from Mr. Conlin?

A Yes, I did.

Q Did you go down and see Mr. Conlin in response to that letter?

A Yes, we did.

Q What was the purpose of that meeting?

A I guess to inform us of the audit that was being taken.

THE COURT: Now just a moment.

MR. HOULIHAN: Your Honor, this is going to relate to the note.

THE COURT: I know it is. Have you got the letter from Mr. Conlin?

A I don't know.

THE COURT: And the reason I asked you, because he asked you if you got a letter after, and he didn't ask you when you got the letter. He didn't ask you how long after.

If there was an audit, presumably you had some notice from the Internal Revenue Service that there was going to be an audit.

THE WITNESS: After the letter from Conlin, I believe.

MR. HOULIHAN: No. Conlin doesn't initiate the audit.

THE COURT: The Internal Revenue initiates the audit, if there was one.

Q Mr. Van Alstine, did you receive the letter from Mr. Conlin before the audit?

A Yes.

Q And did it say anything with respect to an audit?

A (No response.)

Q Do you have the letter there?

A That is one of them. I don't think that is the one you are looking for.

THE COURT: Perhaps all this is unnecessary. It came about because you said that you had written a note to Conlin, and that sometime after that, Conlin had the note and showed it to you.

Now do you remember when that was, was it before the audit?

A It must have been. It had to be.

Q At the time that you met with Mr. Conlin, and this was before the audit but after your tax return had been filed, do you know about how many months after your tax return had been filed that you had the meeting with Mr. Conlin?

A No.

THE COURT: He didn't say he met with Conlin at all before the audit.

Q Mr. Van Alstine, you received a letter from --

THE COURT: Of course, he met with him before the return was filed, and when the return was filed. But he didn't fix the time of the next meeting.

MR. HOULIHAN: Right. That is what I'm trying to find out.

After you signed the return and before the audit, did you meet with Mr. Conlin?

A If it was an audit, yes.

Q And what was said to you at that time?

A He informed us that they were having an audit -- I don't know.

THE COURT: If they were having an audit, you knew it because you were the one, and it was your return they were auditing?

A I don't think we had a notice yet.

THE COURT: Then there wasn't any audit, and you didn't know anything about an audit if you hadn't a notice of it.

MR. HOULIHAN: Your Honor, he advised them that he was going to be audited.

THE COURT: How would he know he was going to be audited? When they send

a notice of an audit, they send it to the taxpayer, don't they?

MR. HOULIHAN: There was an investigation going on at the time, Your Honor, of many people.

Q Did Mr. Conlin tell you at the time of this meeting when he notified you that you would be audited, that there was an investigation going on?

A Yes.

Q And what, if anything, did he tell you about that investigation?

A That we would no doubt be audited and that there should have been -- what do I want to say? It should have been appraised before and after the flood, an appraisal made before and after the flood.

Q I call your attention to Page 11 of your Grand Jury testimony, and would you read that portion right there (indicating)?

THE COURT: Read it to yourself.

MR. HOULIHAN: Read it to yourself to see if it refreshes your recollection.

(Witness complies.)

Q Did Mr. Conlin tell you about an investigation in that

meeting?

A Yes, he did.

Q What did he tell you?

A Well, that we were going to be investigated.

Q Did he tell you that you were going to be investigated?

A Well, it was pretty certain we were.

Q Did he tell you that he was going to be investigated?

A Yes.

Q And did he say anything to you about what you should say with regard to your tax return?

A Well, that we should agree with what was on the form.

Q And what did you tell him?

A Well, I'm going to tell you just what I said in there, and I wasn't in very good humor that night.

(Last answer read.)

Q And what did you say then?

A I don't think I said much of anything, because I was speechless.

Q Pardon me?

A I was rather speechless to think that we --

THE COURT: If you were speechless, that means you didn't speak.

Q Was it at that meeting that Mr. Conlin gave you back the

note that appears on Exhibit C-28?

MR. LEVY: I object, Your Honor.

THE COURT: Objection is overruled.

A I would imagine, because that is the only time that I was in his office after we signed our forms.

MR. HOULIHAN: I offer in evidence C-28.

MR. LEVY: I have no objection.

THE COURT: It is received

(Government's Exhibit 28 marked in evidence.)

MR. HOULIHAN: It says, "Mr. Conlin: Please do not put in the $3,000 flood-related property de-valuation.

"Thank you -- Adrian Van Alstine."

Q And that is the note you gave to him?

A It is.

Q You gave that to him before your return was signed, and this was on the 14th, is that right?

A (No response.)

Q It was on the 14th of March?

MR. LEVY: He didn't give it -- he mailed it.

THE WITNESS: No. I took it down and left it in his office.

Q Is that right? It was on the 14th?

A Yes.

Q When you went down to Mr. Conlin's office to sign your income tax return, did you read the return?

A I doubt if I did. I wouldn't have understood it if I had.

Q Did you talk with Mr. Conlin at that time?

A Oh, yes. We always visited.

Q When you signed the return?

A Any time we ever met we visited.

THE COURT: We are not interested in your visit. We are just interested if you talked about the return.

A No.

Q Did Mr. Conlin go over any of the items on the return with you?

A I would imagine so. Generally, we paid tithes to the church, and that has always been on record.

THE COURT: You mean contributions?

A Right.

Q You paid "tithes" to the church?

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A Yes.

Q That means you pay a portion of your salary to the church?

A A tenth of your salary.

THE COURT: You don't pay to the church any particular portion of your salary, do you?

A A tenth of what I take home, a tenth of my take-home pay, one-tenth. I have done that for years.

THE COURT: Did you tell him that?

A Oh, he knows it.

THE COURT: I don't care what he knows. I want to know what you told him.

A Yes.

THE COURT: I know what "tithe" means. I know that means one-tenth, but when you used the term "tithes," did it mean to you that one tenth of your take-home pay you contributed to the church?

A Right, that's right.

THE COURT: What was your take-home pay, approximately, for 1972?

A 1972? My gosh.

MR. HOULIHAN: Your Honor, we are

not questioning the charitable deductions on this return

THE COURT: What?

MR. HOULIHAN: We are not questioning charitable deductions on this return at all. That was just a statement Mr. Van Alstine mentioned

THE COURT: All right.

Q At the time you signed this return on March 21st, 1973, you say you went down to Mr. Conlin's office, and did he go over each item on this return with you?

A No.

Q Did he point out to you at that time that you were taking a casualty loss in the amount of $3,000?

A Yes.

Q At the time you signed the return?

A Yes.

Q And did you tell him you didn't want to do it?

A Yes. I told him I didn't agree with that, because I knew I didn't have that much loss.

Q What, if anything, did he say to you?

A Well, there was something about that at that late date, he wasn't sure he could get an extension to rewrite it up.

Q Was there ever an appraiser at your property?

A No, sir. If there was, we weren't home.

Q Did you submit any claim to the Small Business Administration by reason of any loss that you suffered as a result of the flood?

A No, I didn't.

Q Now according to this return, there was a refund paid to you of $1,035.23. Did you receive that refund?

A Yes.

Q And what did you do with it?

A I put it in the bank.

Q Why did you put it in the bank?

A Because I knew if I didn't put it in the bank, I wouldn't have it to give it back.

Q Did there come a time that you were audited by the Internal Revenue Service?

A Yes, there was.

Q Did you, in fact, have to pay back money to --

MR. LEVY: I object to the results of the audit, which is a civil matter.

THE COURT: I sustain the objection.

MR. HOULIHAN: I have no further questions of this witness.

* * * * * *

Rochester, New York

Monday, March 29, 1976

10:00 A.M.

- - -

(Trial resumed, jury present.)

THE COURT: No. 5 juror called in and said he has the flu. I will appoint Alternate Juror No. 1 in his place. You will take the place of No. 5.

MR. HOULIHAN: I will call Mr. Thomas Gill.

T H O M A S G I L L,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mr. Gill, where are you from?

A Corning, New York.

Q How long have you lived in Corning, New York?

A All of my life except for military service.

Q And what kind of business are you in, in Corning?

A I am a photographer and a merchant.

Q During the year 1972 was your business damaged by the

floods that hit the Elmira-Corning area?

A Yes, it sure was.

Q As a result of the damage that you sustained through the floods, did you apply for a Small Business Administration loan?

A Yes, I did.

Q Who was your accountant in the years prior to the flood?

A [illegible]er Conlin and Howard Clark.

Q Say in the three years prior to the flood, was Mr. Conlin your exclusive [illegible]ountant at that time?

A At least two years before the flood, or three. I am not positive.

Q And did he maintain your records there at his office of past returns that he filed for you?

A This is my understanding.

Q Following the flood, did you have any of your books and records available to you?

A My tax ledger, all my office was in the basement, and I had about three feet of water on the first floor. So by coincidence, or just luck, my cash ledger was on the first floor.

Q And your cash ledger was the ledger that you maintained, showing your gross sales, is that right?

A That's correct.

Q Would it also show expenses?

A No.

Q Just sales?

A Sales.

Q How about purchases? Any purchases?

A No. All this would show would be my cash receipts.

Q When did you actually apply for the Small Business Administration loan? When did you get your application?

A I got the application blank from the SBA office, which was temporarily in Corning, immediately following the flood, and the exact date I don't remember.

Q Within a month of the flood?

A Yes. I would say within a month.

Q What did you do with the application?

A I took it to Mr. Conlin, to his office. He wasn't there, so I looked up his address in the phone directory and went to his home, which was also in the flooded area on the north side of town, and I took the application blank to him so that he would have it to work with.

Q Did he agree to fill out the application for you?

A Yes.

Q You say you went to Mr. Conlin's office. Was Mr. Conlin's

office damaged by the flood?

A His office, no. This was on a second story.

Q Do you recall when your application was submitted to the Small Business Administration for the loan?

A No.

Q I show you Government's Exhibit 1 marked in evidence, which is the Small Business Administration loan file in the name of Thomas J. Gill, doing business as Gill's Photo Studio. And one of the first documents appears to be Application for Disaster Loan -- Business, and it has what seems to be your signature and the date of October 6, 1972.

MR. LEVY: I object to a copy of his signature.

THE COURT: Objection is overruled.

Q Is that the copy of your signature?

A Yes, it is.

Q And this whole application is a copy -- it is not an original here, is it?

A No, sir.

Q There is some other writing on this application. Is that your writing?

A No. That's not my writing.

Q And these figures here, is that in your writing?

A No, sir.

Q Do you know whose writing it is?

MR. LEVY: I object. That isn't correct. I think the proper question, "Is that a copy of his writing?"

THE COURT: Objection is overruled.

MR. HOULIHAN: We have already established it is a copy.

THE COURT: Objection is overruled.

Q Do you know whose writing that is?

A No, I'm not sure whose writing it is.

Q You are not sure?

A No.

Q Did you write it?

A No, I did not write it.

Q And who did you give the application to, to fill out to apply for the loan?

THE COURT: He has already testified to that.

Q Now subsequent to the time you submitted this application to the Small Business Administration, did you, in fact, bring that over yourself, the application or the copy of the application?

A (No response.)

Q Did you bring it to the Small Business Administration yourself?

A No.

Q Do you know who did?

A I assume Mr. Conlin did.

Q But you never brought it yourself?

A No.

Q Did you receive letters subsequent to the time that this application was submitted from the Small Business Administration?

A Yes.

Q And did they request certain information?

A Yes, they did.

Q And what did you do with those letters?

A I took them to Mr. Conlin's office.

Q Did there come a time that you received a letter saying that your application was withdrawn because they needed additional information from you? Do you remember that?

A Yes.

Q What did you do about that?

A I took that over to Mr. Conlin, or called him on the phone and notified him of it, and then took it over to him.

Q And did you ever get the information in?

A It took some time. I understand that was the information eventually that was given to them.

Q I call your attention to the date of January 18, 1974, and this was at the time of a meeting that you had with Mr. Cristofaro at the Small Business Administration office. Do you recall that meeting?

A I certainly do.

Q Did you make the appointment for the meeting, or did someone else make the appointment?

A The appointment was made by Mr. Conlin.

Q Do you recall about what time you got to the office?

A Not exactly. I know that I had to take some pictures early -- I have a notation on my appointment book for that date. I have "10:00" circled, but it is a general thing. That says, "Walter Conlin -- SBA -- Mr. Cristofaro."

Q So it could have been any time from ten o'clock to later than that?

A That's correct.

MR. LEVY: I object to it as leading.

THE COURT: I sustain the objection.

Q Was it before ten o'clock, Mr. Gill?

A No.

Q Now prior to the time that you went to the Small Business Administration office, did you have a conversation with Mr. Conlin?

A Yes.

Q And was that about your application?

A No. It was for two reasons; one was to specifically find out what time the appointment was for and to find out whether I had enough time to take a picture of that building I had been contracted to photograph in Painted Post before leaving for the SBA office.

Q You didn't talk about the application, then, at that time when you met with Mr. Conlin?

A No.

Q Did there come a time that you went down to the Small Business Administration with Mr. Conlin, or did you go there by yourself?

A No. I went with Mr. Conlin.

Q During this time did Mr. Conlin show you any documents or papers?

A No.

Q And did you have any conversations about the loan applica-

tion at that time?

A No. As far as I was concerned, the appointment had been made with Mr. Cristofaro --

THE COURT: Was there any conversation? That is what he is asking.

Q Was there any conversation about --

A Of that conversation?

Q At the time that you went into the meeting with Mr. Cristofaro, there was some conversation about some tax returns, I assume, is that correct?

MR. LEVY: I object to it as leading.

THE COURT: Objection is overruled.

A Would you repeat that, please?

Q After you got into Mr. Cristofaro's office, there was some conversation about some tax returns, is that correct?

A Yes. Ultimately, there was some conversation about tax returns.

Q You had some other discussions before that, is that right?

A Yes.

Q Now the first time that you saw those tax returns, who had them?

A Mr. Cristofaro. I had a box of records with me, all my

flood-related records. In fact, all of my records from the flood period on, and I put this box on a chair along with my coat. I don't recall exactly what I was doing, but when I first saw the papers, Mr. Cristofaro had them in his hand.

Q Then did he hand them to you and to Mr. Conlin to be signed?

A That's correct.

THE COURT: You are talking about tax returns?

A There was just a pile of papers, Your Honor, which included the tax returns.

Q And did you sign them first?

A Yes.

Q And Mr. Conlin signed them?

A That's correct.

THE COURT: That day?

A Yes.

Q Then they were given back to Mr. Cristofaro, is that right?

A This I don't recall. Some place in there I was given a letter, either by Mr. Cristofaro or Mr. Conlin. I'm not sure which one, which was explaining why they were not accepting my application, and as I was looking this over, and it was some place in through here, which is when Mr.

Conlin was signing the papers, as I remember.

Q So you were reading something while Mr. Conlin was signing the papers?

THE COURT: What papers? He had a box of papers.

Q Was this anything from the box of papers that you had?

A Oh, no.

Q These were the tax returns that Mr. Cristofaro handed you?

A Yes.

Q I show you Defendant's Exhibit 2 in evidence. Is this the letter you were reading after you signed the tax return?

A It appears to be.

Q Did you see where that letter came from before you got it?

A No.

Q But it was in typed form like that when you got it, is that right?

A Yes.

Q About how long into your meeting did you get that letter, do you recall?

A Well, it was a very short time after we had been in. It was some time after I had signed the tax forms.

Q Did you see Mr. Conlin give those tax forms back to Mr. Cristofaro after he had signed them?

A No, I didn't.

Q Do you know whether he did or not?

A No, I don't.

MR. LEVY: I object.

Q Would you tell the members of the jury what happened next?

THE COURT: What do you have in mind?

Q Did there come a time that there was some talk about those tax returns?

A Yes.

Q What was that?

A Not specifically about the returns, but in connection with this letter that was being read, it was obvious that they were not considering the loan.

Q You say "with this letter they were not considering the loan." You are talking about Defendant's Exhibit 2 (indicating)?

(Defendant's Exhibit 2 handed to the witness.)

A That is true. They weren't considering accepting the application at this time. At least this was my understanding.

Q They asked you for new information, is that correct?

A That's correct.

Q Was there some conversation at that point between Mr. Cristofaro and Mr. Conlin concerning the tax returns that you had just signed?

A The first thing I knew that there was a disagreement of any kind, Mr. Cristofaro was asking for these forms back, and Mr. Conlin referred to the letter and said, "This is not the information you want. I will get the information you want and then return them to you." And at that point Mr. Cristofaro said, "We can't take those. You have to leave those here."

Now this may not be the exact words, but it was obvious that he didn't want Mr. Conlin to take them, and Mr. Conlin said, "I brought them with me. I can take them back."

Now some place during the course of events, Mr. Conlin put the papers in his briefcase, and Mr. Cristofaro told him that the only way he could take those papers out was if I withdraw my application, and the exact details at this point I am not sure of, but Mr. Cristofaro called some of the other SBA people around there, and some place along the line, and I don't know who said what, but the FBI was called on the phone.

Q What were you doing during this period of time?

A I was trying to figure what was going on. I didn't understand the reason for what was happening. I didn't understand anything.

THE COURT: What were you doing?

A I was doing nothing at this point. This was --

THE COURT: That is the answer -- he was doing nothing.

Q And you say that Mr. Conlin said that he had come with those returns. Now the first time you saw them was when Mr. Cristofaro had them in his hand, is that right?

A Yes, that's correct.

Q And Mr. Conlin didn't show them to you prior to that time, prior to your meeting down there?

MR. LEVY: I object to it as leading.

THE COURT: Objection is overruled.

A No.

Q Sometime during the course of that conversation, you were given a note that is represented by Government's Exhibit 3-A in evidence, is that right?

A That's right.

Q It says, "I hereby withdraw my application." Who wrote that?

A Mr. Conlin wrote it.

Q And you signed it?

A And I signed it.

Q Why did you sign it?

A Well, if you were in my place and someone is calling the FBI --

MR. LEVY: I object.

THE COURT: I will sustain the objection.

Q At the time of this meeting in January of 1974 had you filed your 1970 tax return?

A Yes.

Q Had you filed your 1972 tax return?

A No.

Q Who had the responsibilities to file that return other than yourself?

MR. LEVY: I object.

THE COURT: I will sustain the objection.

Q Who was filling out your 1972 tax return?

A Mr. Conlin.

Q And it hadn't been filed at that point, and this was in '74, is that right?

A That's correct.

Q Did there come a time that you ultimately did file your '71 tax return?

A Yes.

Q And when was that filed?

A It was sometime in 1974. The date I don't recall. It was as soon as I could get it filed.

Q I show you Government's Exhibit 35 marked for identification, which appears to be a 1970 tax return for Thomas J. and Helen Gill. Is that your signature and the signature of your wife that appears on the bottom?

A Yes.

Q And that is your 1970 tax return, is that right?

A Yes.

Q I show you Government's Exhibit 36 marked for identification, which appears to be a 1971 tax return in the name of Thomas J. and Helen P. Gill. Is that your signature and the signature of your wife that appears on the bottom there (indicating)?

A Yes.

Q And this was not prepared by Mr. Conlin, is that right?

A No.

Q And you were assisted by a new tax preparer at that time,

is that correct?

A That's correct.

MR. HOULIHAN: I offer G-35 and G-36, the '70 and '71 income tax returns of Mr. Gill.

MR. LEVY: I have no objection.

(Government's Exhibits 35 and 36 marked in evidence.)

Q Mr. Gill, the '71 return has a date on this of June 12th, 1974, that was received by the Internal Revenue Service and the date of the preparation appears to be Jun 6, 1974. Is that about the time that you prepared that?

A That's correct.

Q I show you your 1970 tax return, and under the list of Depreciation, Page 2, it shows "Equipment," and the date purchased and the cost. It shows a figure of $6,736. Is that the equipment that you held in 1970 according to your tax return?

A Yes. That is what it shows.

Q And Schedule C of your 1976 tax return shows gross sales of how much money?

A $81,294.22.

Q $81,294.22?

A Yes.

Q Is that in your handwriting, the figures that appear on Schedule C of Government's Exhibit 35?

A No.

Q Do you know whose handwriting that is?

A Mr. Conlin was preparing my return, and whether it is his handwriting or not, I don't know.

Q I call your attention to your loan application, a copy of the loan application contained in Government's Exhibit 1 in evidence, and what are the figures that show the gross sales for the year 1970 as appears on that? Is that $181,294.22?

A That is what it says.

Q That is the difference of a hundred thousand dollars, is that right?

A That's correct.

Q And under "Machinery and equipment," it has a figure on the loan application of $60,341, is that right?

A That is what it says.

Q I call your attention to your 1971 return, Schedule C, your gross sales, gross receipts, $66,542, is that right?

A That's right.

Q And this shows a list of equipment on the Depreciation

Schedule that is identical to the Depreciation Schedule that appears on your 1970 tax return, is that right?

A That's right.

Q It is 4,000, 457, 221, 1,668 and 390?

A Yes.

Q That totals $6,736 as the cost of equipment used in your business?

A That's correct.

Q I call your attention to the loan application for the year 1971, and this shows gross sales of $184,419.18, is that right?

A That is what it says.

Q And that is some $120,000 more than what your actual sales were?

MR. LEVY: I object to what the actual sales were. That is different than what the return says.

THE COURT: Objection is overruled.

Q I show you Government's Exhibit 6 in evidence, which is a portion of a Profit (or Loss) From Business or Profession, Schedule C, purportedly from a 1970 tax return. And Government's Exhibit 6 shows the gross receipts is not there, because that piece is missing, but it shows 'Mer-

chandise purchased $119,718.37," but your return for 1970 that was filed with the Internal Revenue Service and prepared by Mr. Conlin shows "Merchandise purchased" of only $59,718.37, is that correct?

A That's correct.

Q I refer you to the back page of G-6, which appears to be a Depreciate Schedule, and this is similar to the Depreciation Schedule that appears on your filed 1970 tax return as prepared by Mr. Conlin. It shows that you had equipment, according to the tax return, purchased in '61, $4,000, and that corresponds with the equipment that was with the $4,000 purchase in '61, according to Government's Exhibit 6, is that right?

A That's correct.

Q Then on January 11, 1962, the purchase of some equipment for $457?

A Yes.

Q And in 1963 a purchase for $221?

A Yes.

Q And 1964 was $1,668, and these are corresponding, aren't they, each of these?

A Yes.

Q And 1967, you had $390?

A Right.

Q Now your filed tax return doesn't show any additional figures, but Government's Exhibit 6 shows that in 1967 you purchased equipment for $17,419. And then in 1968 you purchased some more equipment for $18,297. And then in 1968 some more equipment for $6,714. And in 1969 for $6,200. And in December of '69 for $4,975.

Those last five items appear on your 1970 return, do they?

A No, they don't.

Q Now the total amount of equipment shown on Government's Exhibit 6 is $60,341, is it not?

A That is what it says.

Q And this corresponds with the figure that appears on your loan application, machinery and equipment, $60,341, does it not?

A Yes.

Q Did you tell Mr. Conlin that you purchased equipment in 1967 at a cost of $17,419?

A No.

Q Did you tell Mr. Conlin that you purchased equipment in July of 1968 at a cost of $18,297?

A No.

Q Did you tell Mr. Conlin that you purchased equipment in December of 1968 at a cost of $6,714?

A No.

Q Did you tell Mr. Conlin that in September of 1969 you purchased equipment costing $6,200?

A No.

Q Did you tell Mr. Conlin that in December of 1969 you purchased equipment costing $4,975?

A No.

Q Do you know where those figures came from?

A No.

Q Referring now to your loan application, did you tell Mr. Conlin that you had gross sales in 1970 of $181,294.22?

A No.

Q Did you tell him that you had gross sales in 1971 of $184,419.18?

A No.

Q Mr. Conlin was your tax preparer during the years 1970 and 1971, was he not?

A Yes.

Q And he had your records during that period of time?

A I was under the impression that he had copies of my records.

MR. HOULIHAN: That is all the

questions I have.

CROSS EXAMINATION

BY MR. LEVY:

Q You told us on direct examination that Mr. Conlin told Mr. Cristofaro, "I brought these in with me, and I can take them out"? He made that statement, did he not?

A This is what I remember, or words to that effect.

Q And he was referring to the tax returns, was he not?

A Well, whatever he had put into his briefcase.

Q And Mr. Cristofaro said to him at one point, "The only way you could take those papers out is if you withdraw your application"? He made that statement, is that correct?

A Yes, that's correct.

Q Then after that statement was made, Mr. Conlin prepared a yellow paper saying, "I withdraw my application," and he gave it to you and you signed it, is that correct?

A Yes.

Q When you were signing this, did Mr. Cristofaro talk to you and tell you not to sign it?

A There was different conversations. By this time there were a number of Small Business Administration people in the office.

Q But did they tell you not to sign it?

A I was urged not to sign it by someone there, and who, I don't know.

Q But you did sign it?

A I did sign it.

Q And it was given to the officers there, is that correct?

A Yes.

Q Whoever was there?

A I signed it on the desk. It was on the desk when I signed it.

Q Now that morning of January 18, 1974, did you go to Mr. Conlin's office before you went to Elmira?

A Yes.

Q And about what time did you get to his office?

A It was sometime between nine and ten.

Q And who was at Mr. Conlin's office at that time?

A His secretary.

Q Do you recollect his secretary's name as Evelyn Beach?

A Evelyn Beach was the name.

Q Was there a Katherine Peterson there also?

A Katherine Peterson worked for Mr. Conlin, and whether or not she was there, I am not sure. She was usually there whenever I had been in Mr. Conlin's office, but whether she was there that morning or not, I don't specifically

remember.

Q Was there some conversation that Mr. Conlin would do some things and then meet you?

A Yes.

Q Was it mentioned that --

A He had something to do and I had something to do, and he would pick me up in front of my studio.

Q Was there any conversation about the fact he was going to copy some papers?

A I don't recall this specifically. He could have. I don't remember specifically.

Q Do you recollect whether you were quite impatient that morning waiting there?

A I certainly was.

Q Then there came a time that Mr. Conlin picked you up at your place of business?

A Yes.

Q Then you drove to Elmira together?

A That's correct.

Q Then you went into the Small Business office at Elmira, do you remember that?

A Yes.

Q Did you have a box with you at the time?

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R I C H A R D W. R U D Y,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mr. Rudy, by whom are you employed?

A The Federal Bureau of Investigation.

Q How long have you worked for the FBI?

A Almost twenty-three years.

MR. LEVY: As I understand it, this gentleman has been sitting in the courtroom for some time.

Q Have you been seated in the courtroom?

A No, sir.

MR. LEVY: All right, my mistake.

Q How long have you worked for the FBI?

A Almost twenty-three years.

Q Where is your duty station?

A Elmira, New York.

Q I call your attention to the date of January 18, 1974. Were you in Elmira on that date?

A Yes, sir.

Q And did there come a time on that date that you received a call from someone at the Small Business Administration office?

A Yes, sir.

Q Would you please tell the ladies and gentlemen of the jury what transpired in that telephone conversation?

A It was approximately noontime on that date, and I was seated at my desk. I received a phone call from James Cristofaro, a Loan Officer at the Small Business Administration in Elmira, New York, and he informed me that he had one Walter Conlin in his office at that time.

MR. LEVY: Wait a minute. I object to what he informed him.

THE COURT: I sustain the objection. It is sufficient that he got the

call.

Q What, if anything, did you do in response to that telephone call?

A I went to the Small Business Administration office.

Q Were you alone at the time?

A No. My partner went with me.

Q Who was your partner?

A My partner is Robert Bucher.

Q And what, if anything, did you do when you arrived at the Small Business Administration office?

A After a discussion with Mr. Cristofaro, who explained the circumstances of what was going on at the time, I went and spoke with Mr. Conlin.

Q About how long a period of time passed between the time you received the telephone call and the time you arrived at the office?

A Approximately ten to fifteen minutes.

Q Did you then speak with Mr. Conlin?

A Yes, I did, sir.

Q What did you tell him at that time?

A I told Mr. Conlin that I had been called to the SBA because there had been an allegation made that he had taken government papers, or property, and that he was destroying

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this property, and I wished to discuss this matter with him.

Q And what was Mr. Conlin doing at this time?

A When I got to the SBA office, he was just kind of roaming around the room.

Q And did he have anything in his hands?

A Not that I recall at the time, sir.

Q And at the time that you spoke with him, was he standing there, or was he seated?

A No. We were both standing, and I said, as I explained my reason for being there, I said that prior to talking to him, I would like him to read a statement of his rights. I produced this statement, and he read the same.

MR. HOULIHAN: Would you mark these for identification?

(Government's Exhibits 47, 48, 49 and 50 marked for identification.)

Q I show you Government's Exhibit 47 marked for identification, and can you tell me what that is?

A Yes. This is the statement of rights that I showed to Mr. Conlin, which he read.

Q And did he sign that?

A No, he did not, sir.

Q Did you ask Mr. Conlin to sign that?

A Yes, I did, sir.

Q What, if anything, did you say?

MR. LEVY: I object.

THE COURT: Objection is overruled.

A He declined and said he wanted to talk to his lawyer.

Q Was he allowed to call his lawyer?

A Yes, he was.

Q Did you read what purports to be a statement of his Constitutional rights?

A No, I did not read it to him, no, sir. He read it himself.

THE COURT: He did read it?

A Yes, sir.

THE COURT: You saw him read it?

A Yes, sir.

Q I show you Government's Exhibit 49 marked for identification. Can you tell me what that is?

A Yes. This is a log showing the attempted interview with Mr. Conlin by myself.

Q And did you interview Mr. Conlin?

A I made an attempt to. I did not because he would not respond to my questions.

Q And what was the time of the interview, the time that the interview began and the time that it terminated?

A The interview began at 12:14 P.M., at which time I gave him the statement of his rights. He returned this statement to me at 12:16, at which time he said that he refused to sign it.

Q Subsequent to the time that Mr. Conlin declined to sign the statement and refused an interview with you, what transpired?

A Well, I made an effort to contact the then Assistant United States Attorney, David Larimer, for an opinion on this matter as to what we should do --

THE COURT: He was in Rochester, and you telephoned him?

A Yes, sir, I telephoned him, sir.

Q And what was Mr. Conlin doing during this period of time?

A At this time he was just walking around the room with these other SBA employees and my partner, talking to him, milling around the office.

Q Was Mr. Conlin talking with you within hearing distance?

A No, sir, I was not within hearing distance of Mr. Conlin.

Q Did there come a time that Mr. Conlin was placed under arrest?

A Yes.

Q I show you Government's Exhibit 48 marked for identifica-

tion. Can you tell me what that is?

A Yes. This is what we referred to as an Arrest Log, and it shows the occurrences that took place from the time we arrested him until, in this case, he was released by the U. S. Magistrate.

Q What time was Mr. Conlin placed under arrest?

A 12:49 P.M.

Q And what, if anything, did you say to him at that time?

A I just told him that he was arrested for theft of government property.

Q Did there come a time that Mr. Conlin was searched?

A Yes, sir.

Q And when was that?

A Just within minutes after the arrest, my partner and I took him to a private room in another part of the building.

Q And what, if anything, did you do when you got to the private room?

A We asked him to remove his clothing, which he did, and we searched his clothing, and we found papers in various parts of his clothing and body.

Q Were the papers in his pockets?

A Yes, sir. These papers, which were all torn up, or at

least appeared to be torn, were in his trouser pockets, in his suit coat pockets, his overcoat pockets and secreted beneath his shirt and undershirt, and he also had some in his hand.

Q Did you collect these papers?

A The ones we found on him at that time, yes, we collected those, and I became custodian of those papers, and then I subsequently got another pile of papers from Mr. Garrity of the SBA.

Q Do you know where Mr. Garrity got those papers?

A He said he had picked these up --

MR. LEVY: I object to what he said.

THE COURT: Objection is overruled.

THE WITNESS: He said he picked these up from the floor where Mr. Conlin had dropped them.

Q Did you take a picture of those papers?

A Yes. Subsequently, I took all of these papers, and I made four separate piles, and I identified each pile as to where these particular papers came from, and then I took two Polaroid photographs of those four piles.

Q I show you Government's Exhibit 50, which consist of

two photographs, and they appear to be identical, are they?

A These are two separate Polaroid photos of the same stacks of paper, right.

Q And these were taken by you?

A By myself.

Q Do these reasonably show the papers as they existed at the time?

A Yes.

MR. HOULIHAN: I offer G-50.

MR. LEVY: No objection.

THE COURT: Received.

(Government's Exhibit 50 marked in evidence.)

Q Calling your attention to Government's Exhibit 50 marked in evidence, there appears to be four different piles of paper here. And Pile No. 1, can you tell me why that is identified as "Pile No. 1"?

A I don't recall which pile is which, but I identified each pile as the location from which it came from. One pile came from his hand; one pile came from Mr. Garrity, that he had collected, and one pile were the papers taken from beneath his dress shirt and his undershirt, and the other pile were the papers that had been taken from all of the

pockets of his clothing.

Q What, if anything, did you do with those papers when you finished collecting them and photographing them?

A I packaged those papers up, and I shipped them to our Laboratory and asked them to try to reconstruct just what these papers were.

Q And these were papers that were subsequently reconstructed by the FBI Laboratory, and they represent Government's Exhibit 10, 7, 8, 12, 13, 9, 6, 11 and 5, is that correct?

A Yes, sir.

Q Now subsequent to the time that you arrived at the Small Business Administration and you ultimately searched Mr. Conlin, at any time did he make any statements to you?

A No, not to me, sir.

Q And did he at any time request that he talk to his lawyer, that he be able to call his lawyer?

A Yes, sir, and he made several attempts to contact his lawyer -- by phone, that is.

Q And at any time did Mr. Conlin speak to Mr. Larimer, the Assistant U. S. Attorney, that you called?

A Not that I recall.

Q And who was present during the search?

A Just myself and my partner and Mr. Conlin.

Q And subsequent to that search, did you take Mr. Conlin over to your office in Elmira?

A Yes, we did, sir.

Q And according to Government's Exhibit 48, this was at 1:08?

A Yes, at 1:08, we transported Mr. Conlin to our office in Elmira.

Q And did you give him lunch at that time?

A He was offered lunch, but he declined.

Q And that is noted on your log, is that correct?

A Yes, sir. This was somewhat later in the day that he was offered lunch at 1:40 P.M.

Q Mr. Rudy, during the period of time that you were at the Small Business Administration office, did you see Mr. Conlin ripping anything?

A I saw his fingers moving, and then I saw small bits of paper falling to the floor.

MR. HOULIHAN: That is all the questions that I have.

CROSS EXAMINATION

BY MR. LEVY:

Q When you searched Mr. Conlin, did you search his briefcase?

A We looked into his briefcase.

Q And did you find any ripped-up papers there?

A I don't recall that we did.

Q Did some of the papers in your picture, Exhibit P-50, come from that briefcase?

A Not that I recall. I describe where they came from.

Q And you are certain that none came from there?

A None that I had that day, no, sir.

Q In searching the briefcase, did you make an inventory of its contents?

A I don't recall searching the briefcase, per se. I looked into it, and that is about as far as we went.

Q In looking at it, did you see whether or not there were any 1040 tax forms in the briefcase?

A I don't recall seeing anything.

Q Were there any papers at all in the briefcase?

A There may have been. I don't recall.

Q Did Mr. Conlin talk to Mr. Welch, an attorney, over the phone?

A Mr. Conlin talked to somebody, as I understand it. I did not hear who he spoke to.

Q Now during the time that you were interviewing Mr. Conlin, was your partner with you, Mr. Bucher?

A I only made one attempt to interview him, and then I left

him, and then my partner stood with him, and I don't know what transpired between them.

Q In making your reports, did you talk to your partner as to what Mr. Conlin had stated to him?

A No. My partner made his own report of what Mr. Conlin stated to him.

Q Did Mr. Conlin ever state to you that he brought those 1040 returns that day to the SBA office at Elmira, and he felt he had a right to take them back with him?

A No. Mr. Conlin refused to talk to me at all.

Q And you don't know if he talked to your partner at all?

A My understanding is that he did speak to him after I had left them in my office in Elmira when I went to the U. S. Magistrate's office.

Q And your understanding is Mr. Conlin did tell him why he felt he had a right --

THE COURT: He didn't say that. He said he understood he talked with him.

MR. LEVY: All right, Your Honor.

Q And you never read your partner's reports?

A I would have at the time I compiled the report, which would have been some two years ago, so I don't recall what was in it.

Q Mr. Conlin was within his rights not to talk to you about this, is that correct?

A That's right, sir.

Q And you told him that he was within his rights not to talk to you?

A Yes. He was aware of that. He read the statement, and then he said he refused to comment.

MR. LEVY: I have no further questions.

MR. HOULIHAN: I have no further questions.

(Witness excused.)

G A R Y L. W A R N E R,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mr. Warner, where do you live?

A Corning, New York.

Q And how long have you lived in Corning, New York?

A About all my life.

Q Are you familiar with the defendant, Walter Conlin?

A Yes.

Q And did he prepare your income tax returns?

A Yes.

Q And how many years did he prepare your income tax returns?

A Once.

Q And what year was that?

A '72.

Q Do you recall how much he charged you to prepare your 1972 tax return?

A I believe it was $113.

Q Now at the time Mr. Conlin prepared your 1972 tax return, did you make an appointment with him to go down and see him?

A Yes.

Q Do you remember when that was?

A It must have been late February.

Q And did you sign the return at that time or sometime after that?

A Later.

Q At the time that you went down to see Mr. Conlin, did you bring your books and records with you?

A Yes.

Q And did you have a conversation with Mr. Conlin at that time?

A Yes.

Q Did you have a conversation at that time concerning medical payments that you made for health insurance?

A Yes.

Q And how much did you tell Mr. Conlin that you paid on medical insurance?

A I gave him all my "Life and Health" and everything. I didn't know for sure what you could claim.

Q Did you explain to him what those things were?

A Yes.

Q The life insurance and the health insurance?

A Yes.

Q How much did you tell him for your health insurance?

A I believe $6.50.

MR. LEVY: I couldn't hear that.

THE WITNESS: $6.50.

Q $6.50 a month, is that right?

A Yes.

Q That was taken out of your pay?

A Yes.

Q Did you have any pay stubs there with you at the time of your conversation with Mr. Conlin?

A I don't remember.

THE COURT: You wouldn't have the

paychecks, would you?

A I normally don't have the stub with me, no.

THE COURT: He didn't ask you if you had the stub. He said, "Did you have the paycheck?"

A No, I didn't.

MR. HOULIHAN: I meant the stubs. I'm sorry. I misspoke, Your Honor.

THE COURT: What stubs?

MR. HOULIHAN: Paycheck stubs showing how much --

THE COURT: You get paid by your employer, do you not?

A Yes.

THE COURT: He has got the stubs.

A No. I have a copy of the stub, too.

THE COURT: He gives you a copy of the stubs?

A Yes.

Q I call your attention to Government's Exhibit 32 marked for identification, which appears to be a 1972 tax return in the name of Gary and Carol Warner, and it appears to have your signature down at the bottom. Is that your

signature?

A Yes.

Q And the signature of your wife?

A Yes.

MR. HOULIHAN: I offer G-32.

MR. LEVY: May I see the back of it?

(Government's Exhibit 32 handed to Mr. Levy.)

MR. LEVY: I have no objection.

THE COURT: It is received.

(Government's Exhibit 32 marked in evidence.)

Q How they deducted, you say, $6.50, and is that per month?

A Yes.

Q That would total some $78 for the year, is that correct?

A Right.

Q I call your attention to Schedules A & B Itemized Deductions on your 1972 tax return, and it shows here one-half of insurance premiums for medical care is $150. Did you tell Mr. Conlin at that time that you paid $300 for health insurance?

A No.

Q Did you have a conversation with Mr. Conlin at the time that he was filling out your tax return concerning the number of miles that you drove during the year 1972?

A Yes.

Q And how much did you tell him that you drove during 1972?

A About eleven thousand.

Q Did you tell him that you drove thirty-five thousand miles during 1972?

A No.

Q Mr. Warner, at the time during the year 1972 did you own a home?

A No.

Q Where did you live?

A In a trailer.

Q In a trailer?

A Yes.

Q And did you have any conversation with Mr. Conlin concerning your trailer?

A Yes.

Q And what was that conversation, as best you can recall?

A That it went through the flood, and that is why I came, basically, to see him, to have my tax prepared. I didn't know how to go about doing it.

(Record read.)

Q Did you tell him that you owned any real estate during 1972?

A Not other than that trailer.

Q Just the trailer?

A Yes.

Q Did you tell him that you owned the property that the trailer was on?

A No.

Q Did you tell him how much rent you paid?

A Yes.

Q And was there any discussion as to the deductibility of that rent?

A He said something about we could get taxes out of it -- we pay part of the taxes.

Q I show you Government's Exhibit 32 marked in evidence, Schedules A & B of Itemized Deductions under "Real estate taxes, $144." Did you pay $144 in real estate taxes?

A No.

Q Did you tell Mr. Conlin that you paid $144 in real estate taxes?

A No.

Q Was there any discussion about $144 with regard to real

estate taxes?

A He said that I paid taxes in the rent that I paid, yes.

Q Did you have a mortgage on your mobile home?

A No. I believe it was paid for at that time.

Q It was paid for?

A I believe it was paid for at that time.

Q Did you own any other real estate at the time?

A No.

Q I call your attention to Government's Exhibit 32 and under "Interest expense," it says, "Home mortgage, $516.46." Did you tell Mr. Conlin that you paid mortgage interest of $516.46?

A No.

Q Was there any discussion about the $516.46?

A No.

Q Mr. Warner, your mobile home was damaged in the flood, is that correct

A Yes.

Q Did you also lose personal property as well as the mobile home?

A Yes.

Q And did you put in a loan request to the Small Business Administration?

A Yes.

Q And how much was that?

A $3,300.

Q And did you get that loan from the Small Business Administration?

A Yes.

Q That was only for your personal property, is that right?

A Yes.

Q Did you suffer any loss to your trailer as a result of the flood?

A Yes.

Q Was that covered by insurance?

A Yes.

Q Were you paid an insurance recovery by your insurance company?

A Yes.

Q Did that put the trailer back in the same condition as it was prior to the flood?

A Practically, yes.

Q Did you tell Mr. Conlin that you had insurance at the time?

A Yes.

Q And did you tell him that you had recovered from your insurance company?

A Yes.

Q Did you tell him how much you had recovered from your insurance company?

A Yes.

Q Now I call your attention to Government's Exhibit 32 in evidence, and under "Casualty or theft," it shows here that after the flood the value of your mobile home was "zero." Did you tell Mr. Conlin that after the flood that your home was worth "zero"?

A No. He told me that is the way they figured it.

Q He told you that?

A Yes.

Q Did you ever have an appraiser out on your property?

A No.

Q Did the insurance company send an appraiser out?

A There was a man there -- yes, he did.

Q And then he made an appraisal of your damage, and you recovered $2,700 from the insurance company?

A Yes.

Q Did Mr. Conlin send any appraiser out to your property?

A No.

Q Sometime after you spoke with Mr. Conlin, you came back and signed your tax return?

A Yes.

Q Did you speak to Mr. Conlin at that time?

A I'm not sure, but I don't believe so.

Q Did you go over the tax return, Government's Exhibit 32, with him, item for item?

A No.

Q Did he discuss any portion of this tax return with you?

A No.

Q At the time he filled out your tax return, did he tell you that he wasn't going to show that you got $3,300 recovery --

MR. LEVY: I object to it as leading.

THE COURT: Objection is overruled.

Q Did he tell you that he was not going to show that you recovered $3,300 from the Small Business Administration?

A No.

Q Did he have a conversation with you about a dispute that he was having with the Internal Revenue Service?

A No.

Q Did he discuss any theories of casualty loss with you?

A No.

MR. HOULIHAN: I have no further questions.

* * * * * *

MR. HOULIHAN: Thank you. That is all.

MR. LEVY: I have no further questions.

(Witness excused.)

P A U L C A R O Z Z O N I,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mr. Carozzoni, where do you live?

A Corning, New York.

Q How long have you resided in Corning, New York?

A Twenty-three years.

Q And are you familiar with the defendant, Walter Conlin?

A Yes, I am.

Q How do you know Mr. Conlin?

A He was and is my accountant.

Q Did he prepare your income tax return for the year 1972?

A Yes, he did.

Q Did he prepare it prior to that time?

A No, he didn't.

Q This was the first year that he prepared it?

A Right.

Q And he has prepared your returns subsequent to that, is that right?

A Yes.

Q How much did he charge you to prepare your return in 1972?

A One hundred and forty-three dollars.

Q And how much did he charge you to prepare your return subsequent to that?

A Eighty-three and seventy-three. I think that is what it was.

Q He told you at the time that he prepared your 1972 return that it would cost more, did he not?

A Yes, he did.

THE COURT: More than what?

Is that the first return he made for you?

A Yes, it is.

Q I show you Government's Exhibit --

THE COURT: Just a moment. I asked him a question. You said he told you in 1972 it would cost more, and I asked more than what, because that was the first year he prepared his return.

Q What was said with regard to the cost of doing your tax return?

A It was an understanding that the first year that he prepared my taxes, that to open up the account and so on, that it would be more expensive, and in the subsequent years, it would go down.

THE COURT: If there was an understanding, then it was reached by words spoken between you and him. Tell us what was said about it.

A I don't actually remember words between --

THE COURT: Then we can't take your understanding unless we know what it is based upon, because we don't know whether there was an understanding merely because you say so. We have to determine from what was said whether there was an understanding or not.

Q Did he say anything to you at the time that you went in to see him to fill out your returns how much it would cost?

A No, not that I remember, no.

THE COURT: Did he make any reference to the fact that the year 1972 was

the year of the flood in Elmira?

A Well, yes, he did.

THE COURT: What did he say about it?

A That was part of the return; when we prepared the return, we discussed that.

THE COURT: You did have a flood loss?

A Yes, I did, and because of that, it was one of the reasons why it wasn't discussed between Mr. Conlin and I verbatim, the rate itself.

THE COURT: It was talked about between you and him?

A I can't say it was, not when we filed the return, no.

THE COURT: I'm not talking about when you filed the return. I'm talking about when you went to him to prepare your return.

A That is what I was talking about, when we went to him.

THE COURT: And you did talk about it then?

A Did we talk about the price?

THE COURT: Yes.

A No.

THE COURT: Haven't you just told us that he said it would be more because of the flood loss in 1972?

A I don't remember exactly when we discussed it, but that was my understanding of it.

THE COURT: Did you discuss it before your return was prepared?

A I don't remember when it was discussed.

THE COURT: You are not very helpful. We don't know anything about it, and we don't know when you talked about it. Did you talk about it the next year?

A I don't remember when we discussed it.

THE COURT: All right. We will take it that way. You don't remember anything about it, apparently.

MR. HOULIHAN: Would you mark this for identification?

(Government's Exhibit 51 marked for identification.)

Q Mr. Carozzoni, I show you Government's Exhibit 51 marked for identification, which appears to be an income tax

return for 1972 on Paul J. and Vicki E. Carozzoni. Is that your signature down at the bottom and that of your wife?

A Yes, it is.

Q This is the return that was prepared by Mr. Conlin?

A Yes, it is.

MR. HOULIHAN: I offer G-51.

MR. LEVY: No objection.

THE COURT: Received.

(Government's Exhibit 51 marked in evidence.)

Q Mr. Carozzoni, did you sign this return the same night that you went to Mr. Conlin to have them prepared?

A No, I didn't.

Q How much time elapsed between the two times, at the time that you went to see him and the time that you actually signed it?

A I really don't know.

THE COURT: About how long?

A Maybe a month or two. I'm not sure.

THE COURT: What is the date of the return?

MR. HOULIHAN: This was dated on

April 9, 1973, is that correct?

A Yes, it is.

THE COURT: What did you say?

A It is dated April 9, 1973.

THE COURT: 1973?

MR. HOULIHAN: Right, Your Honor.

THE COURT: I thought you said 1972.

MR. HOULIHAN: No, Your Honor.

How long prior to that time did you actually go see Mr. Conlin?

THE COURT: He said maybe a month.

THE WITNESS: It is just an estimate. I don't know, offhand.

Q At the time that you spoke with Mr. Conlin, this is the first time that he had done your tax returns, did he go over any items of income with you?

A I gave him my W-2 forms.

Q Was there any discussion concerning any rental income that you received from 1972?

A No, there wasn't.

Q Did he ask you if you received any other income during 1972?

A I don't know if that question was asked. I don't think so.

THE COURT: Did you receive any other income?

A Yes, I did.

THE COURT: Besides wages?

A Yes.

THE COURT: What was it?

A I have income property.

THE COURT: What?

A I have income property.

THE COURT: Did you tell him you had income property?

A No, I didn't.

THE COURT: You went in to have your tax returns prepared, didn't you? You knew you had to, at least, report what income you had?

A I realized that, but I didn't give him that. I just wasn't aware of it. This was the first year that I owned the home, and everything was very new to me with the income property.

Q Did Mr. Conlin ask you questions, and you responded to those questions from him?

A About what?

Q About any income that you had and about any property that you owned?

A He asked for, you know, and I gave him my W-2's, and I don't remember him asking me about the income from the property, but we did discuss some deductions from the income property.

THE COURT: Then you talked about the income property, if you discussed deductions, didn't you?

A Yes, sir.

THE COURT: All right.

Q So you talked about deductions from the income property but not about the income from the income property?

A That's right.

THE COURT: You mean you talked about the deductions from the income, but you didn't talk about the income from the property?

A That's right.

THE COURT: How can you do that?

A (No response.)

THE COURT: If you talk about a

deduction from something, you've got to know what something is, haven't you?

A I realize what you are saying, yes, but it was just overlooked.

Q Mr. Carozzoni, did you tell Mr. Conlin at the time that you went to him to prepare your returns that you were a member of the union?

A No, I didn't.

Q Have you ever been a member of the union?

A No.

Q I call your attention to Government's Exhibit 51 marked in evidence, and on your return it shows "Union Fee $100." Did you tell Mr. Conlin that you paid $100 for a "Union Fee"in 1972?

A I didn't know for sure when we filled out the form. The question was brought up, and I didn't know, and my wife said she would check on it.

THE COURT: You didn't know what?

A If I had paid union fees or not. I had just started working as a plumber and working for my father-in-law, and I didn't know if we were in the union or not, or if I was paying union fees.

Q Did you call up Mr. Conlin and tell him whether or not you

were in the union?

A I believe my wife did return a phone call. I'm not sure. I think she did.

Q At the time you spoke with Mr. Conlin concering filling out your tax return, did you tell him that you owned a truck that you used in your business?

A No, I didn't tell him that.

Q Did you tell him that you owned your own tools that you carried in your business?

A No.

Q I call your attention to a schedule attached to your 1972 tax return, labeled Part II Adjustments to Gross Income -- Line 48 -- Business Expense, and a statement which says: "As a plumber tradesman, I must carry my own tools to the job assignments and furnish my own transportation. This is customary with plumbing tradesmen, and there is no reimbursement outside of my W-2 statement for these."

Did you tell Mr. Conlin that on the night that he filled out your tax return?

A I didn't tell him that, but it was discussed.

Q Is that a true statement?

A No, it is not.

Q And what was discussed with Mr. Conlin regarding that?

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A Mr. Conlin asked me how many miles I drove during the year, and I gave him an estimate, a daily estimate, and from there, I assumed he took the figure for the year. I don't know for sure

Q Did he ask you whether you owned your own truck?

A No. That question wasn't asked me.

Q You just told him how many miles you drove?

A That's right.

Q Now was that with the truck, or was that just mileage that you drove generally?

A It was mileage that I drove with the truck that I used on the job.

Q And he asked you whether or not you owned the truck?

A That's right.

Q That statement that appears on your income tax return, the attachment, Part II, Adjustments to Gross Income -- Line 48 -- Business Expense, that I just read to you, is that in your handwriting?

A No, it is not.

Q Was there any discussion at the time with Mr. Conlin about income tax returns that he prepared for your brother-in-law and father-in-law?

A No. Well, would you ask the question again, please?

Q At the time that you spoke with Mr. Conlin about your 1972 tax return, was there any discussion about the tax returns that he prepared for your brother-in-law and your father-in-law?

A Not at the time, no.

Q There was no discussion about that?

A Not then, no.

Q Was there a discussion after that?

A Yes.

Q When was that discussion?

A When we went back to sign the return, we were notified that it was complete and was ready for our signature, and we went back over it. I don't remember exactly what was said, but it was to the effect that it was the same way that he had done it for other tradesmen and my brother-in-law, and it was carried on from there.

Q And that is what Mr. Conlin told you?

A In so many words, that was my understanding, yes.

Q Now, Mr. Carozzoni, did you suffer any damage to your home as a result of the flood?

A Yes, sir, I did.

Q And how much damage was done to your home?

A How much?

Q Did you have water on your first floor?

A No, I didn't.

Q Just the basement?

A There was some water in the basement and the rear wall of the house started to collapse from the water pressure outside the wall.

Q And pushed the wall in?

A Right.

Q Did you have an estimate for repair of that wall?

A Yes, I did.

Q What was that estimate?

A Approximately fifteen hundred dollars.

Q And did you make an application to the Small Business Administration for that loan?

A Yes.

Q And were you granted a loan in that amount?

A Yes.

Q Did you have the contractor repair the wall?

A Yes.

Q And the house was put back in the same condition it was prior to the flood?

A Yes.

Q Did you tell Mr. Conlin about the loss, the damage to your

property, and your Small Business Administration loan at the time you filled out your tax return?

A At the time he filled it out, yes, but it wasn't fixed at that time.

Q But you had the estimate at that point?

A And I had the money, I think.

Q And you had the money from the Small Business Administration?

A Yes.

Q Now did Mr. Conlin have any discussion with you at that time, at the time you filled out your tax return concerning any loss that you could take as a result of the flood?

A Yes, there was some discussion of it.

Q What did he tell you?

A Both my wife and I were there, and he showed us a sheet that was taken from one of the tax law books -- I really don't know -- and showed us that you could take the loss, take the value of the house before the flood and something about the value of the house immediately after the flood, and that is just about all I remember of the discussion. That was deductible, that difference. That is my understanding of what was deductible.

Q And he discussed this with you at the time you filled out

the return?

A Yes, and he advised me that we should have a realtor inspect the house.

Q Did an appraiser actually come and look at your house?

A Yes, he did.

Q Do you remember when that was?

A Well, it was shortly after we prepared the returns, before we signed them. I don't remember exactly when it was.

Q Between the time you went to see him and before they were actually signed?

A Yes.

Q Would that have been sometime during the month of March, then?

A I wouldn't know.

Q Your return here was signed on April 9th --

THE COURT: You said it was signed April 9th. You went there about a month before.

A So it was during that time, during that month.

Q I show you a copy of your tax return for 1972, and this has an appraiser's certificate on it, Millard L. Brush. Is that the appraiser that came to your house?

A Yes, it is.

Q Did Mr. Brush talk to you at the time he came to appraise the house?

A He did have a little discussion. I don't remember what we talked about, but he went through the house --

THE COURT: Was the wall then fixed?

A No, it wasn't.

Q At the time that you spoke with Mr. Conlin while you were filling out the return, did he discuss with you how much money could be deducted as a result of the flood loss?

A No, he didn't.

Q There was no amount mentioned?

A No.

Q This appraisal letter is dated October 12, 1972, is it not?

A Yes, it is.

Q Mr. Brush did not go to your house on October 12th, 1972, did he?

A It doesn't seem like he could. I don't remember the date he was there.

THE COURT: You just told us that you talked first with Conlin about that?

A Yes.

THE COURT: About a month before

your return was dated, and that would make it in March, 1973?

A Yes.

THE COURT: And he then told you you should have an appraisal, a real estate appraisal?

A That's right.

Q And you did have a real estate appraisal by a man by the name of Brush?

A Yes.

THE COURT: And that was after March, 1973?

A I am getting confused.

THE COURT: Don't get confused. I am taking your word. You said you first talked about this matter with Mr. Conlin in March of 1973?

A (No response.)

THE COURT: Your return was dated April 9, 1973. That is the first time you talked about a real estate appraisal, wasn't it?

A I think so, yes.

THE COURT: Did you ever see Conlin before March of 1973 about preparing your 1972 return?

A I don't remember. I don't know.

THE COURT: Wait a minute, now. Listen, you were thinking about making your return for 1972?

A Right.

THE COURT: Now 1972 would have to elapse before you talked about making your return, wouldn't it, because you would have to know all the figures?

A Yes.

THE COURT: So you went to see him in 1973?

A Yes.

THE COURT: Now at that meeting you talked about the necessity of having a real estate appraisal?

A Yes.

THE COURT: And you did have an appraisal?

A Yes.

THE COURT: And it was afrer March, 1973, wasn't it?

A As best I can recall, yes.

THE COURT: But when you got the appraisal, it was dated October, 1972?

A I can't explain that.

THE COURT: That was not the date of the appraisal, was it?

A No.

THE COURT: All right.

DIRECT EXAMINATION CONTINUED

BY MR. HOULIHAN:

Q Mr. Carozzoni, when you went to sign your tax return in Mr. Conlin's office, did you go over all the items on the tax return with Mr. Conlin?

A Yes.

Q And at that time did you talk about the union fee?

A No, not that I remember.

Q Was that on the tax return?

A That I don't know.

THE COURT: Look at the return.

A It is on there. We went over it, but I don't know that much about it.

THE COURT: Did you talk about the union fee when you went down to sign the return?

A I don't remember talking about it when I went down to sign the return.

Q Is your brother-in-law a member of the union?

A No, he isn't.

Q Is your father-in-law a member of the union?

A No.

Q Did there come a time after your tax return was filed that you were subpoenaed to appear before a United States Grand Jury?

A I was.

Q Did you have a conversation with Mr. Conlin at that time prior to your appearance?

A Yes, I did.

Q Who was present at that time?

A My wife and I, Mr. Conlin, and attorney Robert Tyle.

Q Was there any discussion about your 1972 income tax return?

A Yes, there was.

Q Would you tell the members of the jury what was said at that time?

A We went in and sat down, and there was a copy of an IRS

statement that went over the points that they had in question, and we went over them, and I don't remember what the discussion was about, but I brought up the topic of the business miles, and I couldn't come up with an explanation for the union dues.

Q Did Mr. Conlin tell you what you should say with regard to your 1972 tax return?

A No, he didn't.

Q Did he explain the figures that appeared on your 1972 tax return?

A By "explain the figures," what do you mean?

Q How he arrived at those figures.

A Yes, he did.

Q And did he give you an explanation for arriving at the statement that appears on the last page, that attachment, that says, "As a plumber tradesman, I must carry my own tools," et cetera, and that is the same statement I read to you before. Did he give you an explanation for that?

A He said that he just assumed that I was in the same situation as other plumbing tradesmen and went the standard route of taking their deduction for business mileage and tools.

Q Was that, in fact, true? Did you own your own car, and

did you own your own tools?

A No, not at that time, no. That was just his explanation.

Q At the time of this discussion, and this was just prior to your Grand Jury appearance which was September 13th, 1974, do you recall that?

A Yes, I do.

Q Did you have a discussion about union fees with Mr. Conlin?

A I don't remember talking about it.

Q Was there an explanation for that at the time?

A Not that I can remember.

Q Mr. Carozzoni, at the time you had this discussion with Mr. Conlin about your Grand Jury appearance, did you discuss the rental income from your property, why that wasn't on your income tax return?

MR. LEVY: Your Honor, I object. The issue here is what he told Mr. Conlin before they drew up this return, not what was talked about.

THE COURT: Objection is overruled.

Q Did you go over that portion of your tax return?

A Yes, we did.

Q And did Mr. Conlin give any reason why that was not on your return?

A Just an oversight on both of our parts. It was so obvious.

Q This is what he told you at that time, is that right?

A Yes, sir.

MR. HOULIHAN: That is all the questions I have at this time.

* * * * * *

(Recess from 3:30 p.m. to 3:45 p.m.)

H E R M A N G. C L A R K,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mr. Clark, where do you live?

A Campbell, New York.

Q Is that in the Elmira-Corning area?

A It is the Corning area. It is ten miles this side of Corning.

Q And do you know the defendant, Walter Conlin?

A Yes, I do.

Q And did he prepare your income tax return for you at some time?

A Yes, he did.

Q Did he prepare your income tax return for the year 1970?

A Yes.

Q Do you remember how much he charged you for that year?

A Thirty or thirty-four, maybe.

Q How about 1971? Do you remember what he charged you for that?

A Seventy-one.

Q And 1972?

A A hundred and fifty-five.

Q Did he prepare your returns for you in 1973?

A No.

Q I call your attention to the year 1973. You had Mr. Conlin prepare your 1972 income tax return, is that correct?

A Right.

Q I show you Government's Exhibit 31 for identification, which appears to be a tax return for 1972 in the name of Herman G. and Judith A. Clark, and is that your signature down at the bottom?

A Yes.

Q And the signature of your wife?

A Yes, it is.

MR. HOULIHAN: I offer G-31.

MR. LEVY: No objection.

(Government's Exhibit 31 marked in evidence.)

Q Mr. Clark, this Exhibit shows that there is a date on here of February 14, 1973. Is that the date that this return was signed?

A It probably is, yes.

Q Do you know how long prior to that time that you met with Mr. Conlin concerning preparing this 1972 return?

A Probably about a week, I would imagine.

Q Did you have a discussion with Mr. Conlin at that time?

A When I had them prepared.

Q Were you alone, or was your wife with you?

A I was alone.

Q You were alone?

A Yes.

Q Did you bring a summary sheet with you at that time?

A Yes, I did.

Q Did you prepare that from your books and records?

A Yes.

MR. HOULIHAN: Would you mark this for identification?

(Government's Exhibit 52 marked for identification.)

Q I show you Government's Exhibit 52 marked for identification. Is that the sheet that you prepared to assist in preparing your 1972 tax return?

A Yes, it is.

Q And did you give that sheet to Mr. Conlin?

A Yes.

Q And this sheet contains all the figures that you felt were deductible --

MR. LEVY: I object to it as leading.

THE COURT: Objection is overruled.

Q And this worksheet contains all the figures that you felt were deductible that you paid during that year, is that right?

A That's right.

MR. HOULIHAN: I offer G-52 in evidence.

MR. LEVY: May I have a preliminary question?

There are various checks with colored pencil, blue and black, after the various items here. Were they on there at the time you gave it to Mr. Conlin?

A I have no idea.

THE COURT: Now just look at it. You did prepare a summary sheet?

A Yes, sir, but I can't remember the checks, the checkmarks.

MR. LEVY: Your best recollection is that these checkmarks were not on it at the time you gave it to him?

A That's correct.

MR. LEVY: I have no objection.

THE COURT: Received.

(Government's Exhibit 52 marked in evidence.)

DIRECT EXAMINATION CONTINUED

BY MR. HOULIHAN:

Q Mr. Clark, at the time you discussed your return, the preparation of your 1972 tax return, did you sit across from him, and did he ask you questions?

A Yes. I sat across from him.

Q Was he taking notes as you were talking to him?

A Right.

Q Did you tell him how much money you spent for medical expenses for the year 1972?

A Whatever is on here, $215.95.

Q $215.95, is that right?

A That's right.

Q Did you tell him that you paid any more than that?

A No.

Q I call your attention to your 1972 tax return, Page 2 under "Itemized Deductions," and under Medical Expense, it shows that total deductibility in Medical and Dental expenses,

$461.62. Did you tell Mr. Conlin that you paid $461.62 for the medical expenses?

A No.

Q Did you tell him that you paid Dr. Lacuona $18?

A No.

Q Did you have any discussion with him at that time about any particular doctor?

A You mean if I knew how much I paid each doctor?

Q Yes.

A I told him I didn't.

Q So you didn't discuss particular amounts to any particular doctor?

A No.

Q Did you tell him what doctors you had?

A I told him what the name of our doctors were.

Q Did you tell him that you spent any more than $215.95 on doctors or drugs or medicine or dental expenses?

A No.

Q Did you have a conversation with Mr. Conlin at the time that he was preparing the '72 tax return regarding any interest expenses that you paid on installment purchases?

A No.

Q Did you have any interest expense on installment purchases

during 1972?

A Just the ones I had under "Interest, J. C. Penney's."

Q That was $27.69?

A Right.

Q I call your attention to the "Itemized Deductions" portion, and it has got an amount "per schedule, $272.99."

Now referring to the back page, the schedule attached, for Line 22, Interest Expense, and it has got J. C. Penney's, 27.69, and did you tell him that you paid 27.69 to J. C. Penney's?

A It is on the sheet here.

Q And the First National Bank, $80.08, and did you tell him that?

A Right.

Q You did tell him that?

A Yes.

Q Did you tell him that you paid any money to the Chemung Canal Trust?

A No.

Q Did you pay any amount to Lincoln First Bank of Rochester?

A Yes.

Q How much was that?

A 75.49.

Q And did you tell him that you paid any amount to the Prudential Insurance Company?

A Yes.

Q How much was that?

A $10.17.

Q And did you tell him that you paid anything to the Corning Building Company?

A Yes.

Q How much was that?

A $7.16.

Q But you never told him that you paid any amount to Chemung Canal Trust Company, is that right?

A Right.

Q Have you ever had a loan with the Chemung Canal Trust Company?

A Yes.

Q And when was that?

A I think it was in '70.

Q What was that for?

A House trailer.

Q And did you ever sell the house trailer?

A Yes.

Q When did you sell that?

A I think it was in '70 when we built our home.

Q In 1970, so you didn't have any interest expense in 1972 with regard to that house trailer?

A No.

Q And you didn't tell him that you did?

A No.

Q Did you tell him how much you paid on home mortgage interest?

A (No response.)

Q Your mortgage with the Corning Savings & Loan?

A Right.

Q That was $1,188.43, and that appears on the income tax return, does it not?

A Right.

Q Now it says, "Installment purchases $92.14." Did you tell Mr. Conlin that you had installment purchases of $92.14?

A No.

Q Do you know how that figure got on there?

A No.

Q Is your wife a nurse?

A Yes, she is.

Q And you work for the United States Postal Service, is that right?

A Right.

Q I show you Government's Exhibit 31 in evidence, which is a tax return, and under Miscellaneous deductions, it shows expenses for R. N. Uniforms, shoes, stockings, and it says, "Dues and fees."

Did you tell Mr. Conlin that you paid $28 for dues and fees for your wife?

A No.

Q And you were the only one present, is that right?

A Right.

Q Do you know where that $28 came from for dues and fees?

A No.

Q Now in preparing your tax return, it has got "Preparation--tax fee," a total value of $114. Do you know where that $114 came from?

A No.

Q How much did you pay in 1971 to pay your tax return?

A $71.

Q Is that $71?

A Right.

Q That is shown on your worksheet, is it not?

A Right.

Q Now the expenses for nurse's uniforms, shoes, and Supphose, and those are listed on there, is that correct?

A Right.

Q And there is nothing in there about dues and fees. Did you tell Mr. Conlin that you paid $28 in dues and fees?

A No.

Q Mr. Clark, in the course of your duties as a postman, and you drive your own car, do you not?

A Right.

Q And are you reimbursed by the government for the amount of miles that you drive using your own car?

A Yes, I am.

Q And did you tell Mr. Conlin how many miles you drove during the year 1972?

A Right.

Q How many miles did you tell him?

A 61.15 miles a day.

Q 61.15 miles a day?

A Right.

Q And you worked five or six days a week?

A Back then I think I was working five days one week and six days the next.

Q If my multiplication is correct, about fifteen thousand miles. Did you receive reimbursement from the Post Office for driving that amount of mileage with your car?

A Yes.

Q Did you tell Mr. Conlin about that at that time?

A Yes.

Q Did you tell him how much you received in reimbursement?

A Yes.

Q How much was that?

A $1,856.66.

Q On your income tax return, it shows that the reimbursement was taken off the total mileage, is that right, $1,856.66?

A Right.

Q In addition, under that "Business expense," and this is the last schedule, it shows, "Flashing car light, $28." Did you purchase a flashing car light for $28 during 1972?

A No.

MR. LEVY: I object unless that is what he told Mr. Conlin and not what he --

THE COURT: Objection is overruled. I presume he will ask him that.

Q Did you tell Mr. Conlin that you purchased a flashing car light for your car?

A No.

Q Do you know where the expense came from for the flashing

car light?

A No.

Q Mr. Clark, did you have a discussion with Mr. Conlin concerning your charitable contributions?

A He asked me about them. I told him I didn't have any receipts for any of them.

THE COURT: You didn't what?

A I didn't have any receipts for any contributions.

Q Did you tell him that you made contributions?

A Yes.

Q Did you tell him that you gave $132 to the Methodist Church?

A No.

Q Did you tell him that you gave $22 to Sunday School?

A No.

Q Did you tell him that you gave $5 to One Great Hour of Sharing?

A No.

Q Did you tell him that you gave $5 to Worldwide Communion?

A No.

Q Did you tell him that you gave $26 to "Miscellaneous organized charities"?

A No.

Q Did you tell him that you gave $5 to Christmas offerings?

A No.

Q Did you tell him you made an Easter offering of $10?

A No.

Q Do you know how those figures got on your tax return?

A He wrote them down.

Q But you didn't supply him with any information to that effect?

A No.

Q Mr. Clark, was your house damaged as a result of the flood in June of 1972?

A I got water in the basement.

Q How much water did you get?

A About a foot.

Q And was there any structural damage to the house?

A Jus a cellar floor cracked.

Q And did you receive any damage to personal property?

A Some, yes.

Q And do you know what you lost?

A A washer and dryer and clothing and dishes and things that we had stored down the cellar.

Q Did you apply to the Small Business Administration for a loan to cover personal property that you lost?

A Yes.

Q How much was that?

A Six hundred dollars.

Q And did you receive that loan?

A Yes.

Q Did you tell Mr. Conlin about that?

A Yes.

Q Was there a discussion at the time that you were filling out your tax returns about any damage to your real estate?

A Well, he told me I could take depreciation.

Q And did you tell him how much you lost as a result of the depreciation on your house?

A No.

Q I show you your 1972 income tax return, and it shows that market value before the flood was $25,000 and after it was $22,000, with a loss of $3,000. Did you tell Mr. Conlin that you had a loss of $3,000 by reason of the flood?

A No.

Q Was the amount $3,000 ever discussed between you and Mr. Conlin?

A Yes. He asked me about what my house was worth.

Q What did you tell him?

A Between twenty and twenty-five thousand.

Q Did he tell you how much it was worth after the flood?

A No. He just said, "Take $3,000 depreciation."

Q Did he suggest an appraisal on the property?

A No.

Q Has any appraiser come to your property from Mr. Conlin's office?

A No.

Q You did have an appraiser from the Small Business Administration, did you not?

A Right.

Q And did they appraise any damage to your house?

A To the cellar floor, right.

Q And that is what you got the loan for, is that right?

A No.

Q In addition, did you apply for a loan for the damage to the cellar floor?

A No, not for the damages.

Q Was that repaired?

A No. I never did anything to it.

Q Was it serious damage?

A No -- cracks in the cellar floor.

Q Are they wide cracks or just hairline cracks?

A They are wider than that, a half-inch wide.

Q Did you ever have an appraisal done in connection with your

tax return to determine whether you lost $3,000 as a result of the flood?

A No.

Q And it was Mr. Conlin who suggested the $3,000 figure?

A Right.

Q Sometime after you had this conversation with Mr. Conlin in preparing your return, you ultimately signed it, and about how long afterwards, after the conversation, did you actually sign the return?

A About a week.

Q And at the time you went in to sign your return, did you have a discussion with Mr. Conlin?

A No.

Q And did you examine the return, item for item?

A No.

Q Did you ask any questions to either Mr. Conlin or someone else regarding any items that were on your return?

A No.

MR. HOULIHAN: That is all the questions I have at this time.

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R O B E R T W. B U C H E R,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mr. Bucher, by whom are you employed?

A The Federal Bureau of Investigation.

Q And where are you employed?

A I am stationed at Elmira, New York.

Q And how long have you been with the FBI?

A Twenty-four years.

Q I call your attention to the date of January 18th, 1974. Were you stationed in Elmira at that time?

A I was.

Q And at that time did you go to the Small Business Administration office in Elmira with Special Agent Rudy?

A Yes, I did, sir.

Q And is Mr. Rudy your partner?

A Yes, he is, sir.

Q And just the two of you are stationed down in Elmira?

A Yes, sir.

Q Would you tell the members of the jury approximately what time you arrived at the Small Business Administration office?

A It was shortly after noon, like twelve ten, twelve fifteen, something like that.

Q Did you see Mr. Conlin there at that time?

A Yes, I did, sir.

Q What was he doing at that time?

A He was standing by one of the desks in the Administrative

Office.

Q And was this in a private office of one of the individuals or a main office?

A It was in the open area of the main office.

Q And what was he doing at that time, if anything?

A He was just standing there at that time.

Q And did you have a conversation with him at that time?

A Yes, sir.

Q What was that?

A I asked Mr. Conlin what was going on, and I asked him where were the papers that he had allegedly taken from the file that we had been told about.

Q And what did he say to you?

A He did not answer me.

Q Did you say anything else to him?

A Not at that time, no, sir.

Q How long were you there at this Small Business Administration office?

A (No response.)

Q I show you Government's Exhibits 48, 49 and 47 marked for identification, which have been previously identified by Mr. Rudy, and perhaps one of those might refresh your recollection.

(Government's Exhibits 47, 48 and 49 handed to the witness.)

A We were there about forty-five or fifty minutes.

Q And during that period of time, you say when you first arrived Mr. Conlin was standing up in the main office?

A Yes.

Q Did there come a time that Mr. Conlin sat down?

A No, sir. Mr. Conlin, when he declined to answer me as to when I asked what was he doing, and he should give back any papers that he might have taken, my partner got on the telephone and I stayed with Mr. Conlin. By that, I mean I stayed physically with him, within a foot or two of him, and kept by eye on him until the matter was resolved, and Mr. Conlin walked about the open part of the office for the next fifteen, twenty minutes or so, and I do recall telling him at one point to stay still, you know.

Q Was he doing anything while he was walking around the office?

A Yes, sir.

Q What was he doing?

A He was carrying a briefcase, and he held the briefcase in his left hand in front of him, and he was putting his right hand in his pocket, pulling something out of his

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pocket, and making motions as if he was stuffing material inside his dress shirt, but the briefcase blocked that part, but, of course, I could see all this hand movement and arm movement.

Q And about how long did this go on?

A Twenty minutes, possibly.

Q And then you asked him to sit down?

A I don't recall asking him to sit down, sir.

Q Did he ultimately sit down?

A I don't remember him sitting down.

Q Did you have him stand in one spot?

A I did ask him to stop, you know, running around the whole office, yes, sir.

Q Did he say anything to you during the period of time that you were at the Small Business Administration office?

A I don't recall him saying anything to me.

Q Did he attempt to call his lawyer?

A I believe he did make a telephone call for that purpose. I don't think it was completed, as I remember it.

Q Did there come a time that you left the Small Business Administration office?

A Yes, sir, after he was placed under arrest.

Q Now Government's Exhibit 48 is the log of the arrest, is

that right?

A Yes, sir.

Q And that is signed by you as well as Special Agent Rudy?

A Yes, sir.

Q About what time did you place Mr. Conlin under arrest?

A At 12:49 p.m., January 18th.

Q You arrived there approximately 12:10?

A Yes.

Q And at 12:49 he was placed under arrest?

A Yes, sir.

Q Did he say anything to you, give any explanations at all during that period of time?

A No, sir.

Q What, if anything, did you do after Mr. Conlin was placed under arrest?

A After he was placed under arrest, we notified him that we were going to search his person incidental to arrest and because of the observations I had made of what he was doing during the period immediately prior to arrest. We secured a private room at the building and took Mr. Conlin there and searched his person.

Q And was this a forcible search, or did he voluntarily take his clothes off?

A There was no force involved, although Mr. Conlin did not make any statements to us. He did what he was instructed. He didn't fight us in any way.

Q There were some papers then taken, is that correct?

A We found papers in Mr. Conlin's coat pocket, and inside his shirt, and he had removed his tie and his coat and his dress shirt and his trousers, and when he removed his trousers, and when he removed his dress shirt, a number of torn pieces of paper did fall on the floor and were recovered by myself and Mr. Rudy.

Q Were you present when the photographs, Government's Exhibit 50 in evidence, were taken?

A Yes. I remember that being taken in our office.

Q And those were the papers that had been taken from Mr. Conlin, that fell to the floor?

A It appears to be the photograph.

Q You didn't take this one?

A No, but I was there when Mr. Rudy took a picture of the piles of paper.

Q Did there come a time that you ultimately left the Small Business Administration office with Mr. Conlin?

A Yes, sir, immediately after the search in that private room that I spoke of, and we went to my office, the Resident

Agency office in Elmira, and as soon as we arrived there, I contacted the United States Magistrate for the purpose --

Q Is he located in Elmira?

A He is located in a building in close proximity to our office.

Q And how long were you at your office?

A A little over an hour, an hour and ten minutes, maybe.

Q And during that period of time, did you have any conversations with Mr. Conlin?

A Yes, sir.

Q Explain to us what they were?

A When we got to our office, and since Mr. Conlin had just been arrested, he was fingerprinted and photographed, and Mr. Rudy left to file the complaint at the United States Magistrate's office, and I felt it would be more comfortable for Mr. Conlin and I to merely wait in our office, which is directly across the street from the Magistrate's office. So we remained there for about an hour after Mr. Rudy had gone and after he had been fingerprinted and photographed. Mr. Conlin had previously refused any comments, so I made no attempt to interview him. I remember I did make attempts to make small talk, so to speak. The two of us were in the office for an hour, and I didn't elicit much

response from Mr. Conlin. He did ask to use the telephone again, and I believe he called his office in Corning from my office. Then I would say after we had been in the office forty, forty-five minutes, Mr. Conlin did volunteer some statements to me, which I noted down, and which I do recall.

Q What were these statements?

A We were sitting in the office, and I don't remember his exact phraseology, but I think he said, "The reason I tried to take those tax returns, or papers, is because a red-headed male employee of the SBA told me that I couldn't leave the office with them."

He also told me that the papers which he had torn and which we had found on his person were not previously given to the SBA, although he realized the SBA officials maintained that. And he told me that he had just given them to the SBA that morning and that they were copies of unfiled tax returns of his client, Thomas Gill.

He further told me that he and his client were being interviewed by a Mr. Cristofaro of the SBA and that after he had given these copies of unfiled tax returns of Mr. Gill, Mr. Cristofaro returned them asking that Mr. Gill sign and date them as the taxpayer and that Mr. Conlin

sign and date them as the preparer, and they both did so. He gave the signed copies back to Mr. Cristofaro and were then given a letter by Mr. Cristofaro which stated, in part, that the SBA desired authenticated copies of Mr. Gill's tax returns for that year, tax returns which bore the official IRS stamp, showing that they were true copies. And he said that since these were not copies of returns that had ever been filed, that these were unfiled returns, that they could never be authenticated as being true copies, because he never filed them. So he felt he should take them back. He concluded by stating that had he been given this letter requesting authenticated copies marked to show they were true copies, he never would have given Mr. Cristofaro the copies he did give that day. And that is all I recall.

Q And this conversation took place about an hour and a half after you first made contact with Mr. Conlin?

A (No response.)

Q Is that right, you were forty-five minutes at the Small Business Administration office?

A Yes, about an hour and a half after we originally got to the SBA office, shortly after noon that day.

Q And it was forty-five minutes in the SBA office, and he

never said anything to you?

A No, and I attempted to talk to him at that point, and he declined to answer me.

Q And then you were forty-five minutes in your own office, and you didn't attempt to interview him at that time, but forty-five minutes passed before he volunteered the statement that you just told us about, is that right?

A Yes, with the times being approximate.

Q At the time that you were at the Small Business Administration office with Mr. Conlin, did you ask him why he had taken the returns, or why he had taken the papers?

A No, sir.

Q Did you ask him why he was ripping up the papers?

A No, sir, because when I first saw Mr. Conlin, he was not ripping up papers. He was merely standing there. And when I went to him, after being told that he had possession of these papers, and we introduced ourselves and showed our identification that we were special agents of the FBI and I asked him to return any papers that he might have had, that he could not take these, and he didn't do this, and it was thirty minutes later, probably, before he was ultimately arrested, because we didn't want to arrest him. It seems a little silly that he wouldn't give us the

papers, you know, but he made no comment to me at all.

MR. HOULIHAN: Thank you. I have no further questions.

CROSS EXAMINATION

BY MR. LEVY:

Q Did you help your partner in search of Mr. Conlin?

A Yes, I did, sir.

Q In that search, did you look in his briefcase?

A I don't recall looking in his briefcase.

Q Did any of the parts of the papers shown in Exhibit G-50 come from his briefcase?

A Not to my knowledge, sir, no.

Q And you are telling us that you saw Mr. Conlin with his briefcase open, taking and putting papers in and out of it, and you didn't search his briefcase?

A No, I did not say that, sir. The briefcase was not opened. The briefcase was being held in front of him (indicating), shielding his actions, obviously.

Q So you never looked in his briefcase, to your memory?

A I didn't, no, sir, but it would certainly be natural when you arrest a person who has a briefcase to examine that briefcase.

Q But you didn't do it?

A No, I don't have a recollection of it, sir.

Q Was Mr. Conlin wearing an outer coat as well as a suit jacket?

A I don't recall, sir.

THE COURT: It was wintertime. It was January.

A It was January, sir.

THE COURT: And you don't remember whether he had a coat?

A Whether he was wearing it, no, I don't, or had one. I have no recollection of an outer coat.

THE COURT: You took him from one building over to your office, and you went outdoors necessarily?

A Absolutely, sir.

THE COURT: You don't know whether he had an overcoat or not?

A I would certainly assume he had an overcoat in January, but I don't have any recollection of the coat.

THE COURT: I don't want you to assume. All right.

Q Do you have any recollection of searching through an overcoat?

A No, sir.

Q Your partner gave Mr. Conlin a piece of paper with his Constitutional rights on it, is that correct?

A Yes, sir.

Q In that paper Mr. Conlin was advised that he didn't have to say anything to you, and he had the right to get a lawyer, isn't that correct?

A Yes, sir.

Q So Mr. Conlin was within his Constitutional rights of not talking to you if he so wished, is that correct?

A Absolutely, sir.

Q But then Mr. Conlin did talk to you sometime after his arrest and before he was arrainged before the Magistrate?

A Yes, sir.

Q When he did talk to you, he told you in words or substance that copies of the tax returns in question were not part of the SBA file regarding his client, Thomas J. Gill, but were actually copies of unfiled Gill tax returns which had been brought to the SBA Elmira office by Conlin earlier on January 18th, 1974, and had never been submitted to the SBA previously. Did he tell you that?

A Yes, he did, sir.

Q As a matter of fact, I'm reading from your report, am I not?

A It sounds like it, sir.

Q And these are your words of what Mr. Conlin said, are they not?

A Yes, sir.

MR. LEVY: I have no further questions.

REDIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mr. Bucher, you made the report of what Mr. Conlin told you? You wrote out and provided that as part of the investigative file, did you not?

A Yes, sir.

Q And that was what Mr. Levy had in his possession?

A Yes, sir.

MR. HOULIHAN: That is all I have.

RECROSS EXAMINATION

BY MR. LEVY:

Q Do you recollect that when your partner called Mr. Larimer here in Rochester that you permitted Mr. Conlin to talk to him on the phone, or Mr. Conlin was permitted to talk to him on the phone?

A No, I don't, sir.

Q You don't recollect that?

A No, sir.

MR. LEVY: I have no further questions.

(Witness excused.)

(At 4:50 p.m., an adjournment was taken to Tuesday, March 30, 1976.)

- - -

Rochester, New York

Tuesday, March 30, 1976

10:00 A.M.

- - -

(Trial resumed, jury present.)

L A R R Y M A D D E N,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mr. Madden, where do you live?

A 719 Cayuga Drive, Horseheads, New York.

Q That is in the Elmira-Corning area?

A It is in the Elmira area, closer to Elmira than Corning.

Q Do you know the defendant, Walter Conlin?

A Yes, I do.

Q And do you see him in the courtroom?

A Yes, sir.

Q Would you please identify him?

A It is the gentleman right next to the fellow in the blue suit.

Q The fellow in the brown suit?

A Yes.

MR. HOULIHAN: For the record, he identified the defendant, Walter Conlin.

Q How long have you known Mr. Conlin?

A Mr. Conlin prepared my income tax for 1971 and 1972.

Q How much did he charge to prepare your 1971 tax return?

A Forty-three dollars.

Q And how much did he charge to prepare your 1972 tax return?

A Ninety-three dollars.

Q I show you Government's Exhibit 30 marked for identification, which appears to be the 1972 tax return in the name of Larry R. and Joanne E. Madden, is that correct?

A That's correct.

Q Is that your signature down at the bottom, and the signature of your wife?

A My wife signed for me in both places.

Q Was that signed with your permission?

A Yes.

MR. HOULIHAN: I offer G-30.

MR. LEVY: No objection.

(Government's Exhibit 30 marked in evidence.)

Q Mr. Madden, when you had Mr. Madden assist you in preparing your 1972 tax return, did you have an appointment with

him? Did you go to his office?

A Yes, sir.

Q Did you bring anything with you at the time you went to see him?

A I brought everything that I had.

Q And did you have a worksheet or something, or just all your receipts?

A I just had my receipts.

Q At the time that you went to see him, did he sit across from you and ask you questions?

A That's correct.

Q And was he taking notes, then, when you responded?

A Yes, sir.

Q What, if anything, did you tell him that you paid for health insurance during 1972?

A I had my pay stubs with me, and on the pay stubs is a gross amount for medical insurance and insurance.

Q What was the gross amount that you paid in 1972 that you told Mr. Conlin, for medical insurance?

A $266.85.

Q This is medical insurance or all insurance?

A That is total insurance, because it lists it as insurance.

Q What did you pay for health insurance?

A I didn't have it broken down at that time. I believe in the subsequent audit, it was $47, I think, that they allowed.

MR. LEVY: I object to what he told him.

THE COURT: I sustain the objection.

Q Did you tell Mr. Conlin that you paid $266.85 for medical insurance on that evening?

A No, not medical, just total insurance.

Q Did he ask you what portion was for medical and what portion was for life?

A Not to my recollection, not specifically.

Q In any event, did you tell him that you had over $300 in medical insurance?

A No, sir.

Q At the time that you met with Mr. Conlin, did you have a discussion regarding how many charitable contributions you had?

A Yes.

Q And do you have a record of the amount of contributions that you made?

A Most of them were only a dollar and two dollar donations

that were given to various organizations. It is difficult to have a receipt for every dollar you gave.

Q Did you tell him at that time that you gave $312 to St. Mary's Church?

A That is correct. I did.

Q Did you tell him that you gave $5 to One Great Hour of Sharing?

A Yes, sir.

Q And did you tell him that you gave $5 to World Day of Prayer?

A Yes.

Q Were the contributions that appear on your tax return allowed?

A They were not allowed by the IRS.

MR. LEVY: I object to whether they were allowed or not allowed.

THE COURT: I will sustain the objection.

Q Let me show you the return, and this is Government's Exhibit 30 in evidence. Did you tell him that you gave money to each and every one of those organizations in the amounts shown?

A Either my wife or I, that's correct, sir.

Q At the time that you met with Mr. Conlin, was there a conversation regarding any uniforms that you are required to wear as part of your duties?

A It was clothing -- not necessarily uniforms.

Q What is your occupation?

A I am an Account Manager for Corning Glass Works.

Q What do you do as Account Manager?

A I am responsible for all the sales and market for Zenith Radio in Chicago, Illinois.

Q Did he have a conversation with you at the time you filled out your return concerning any clothing that you wore in your employment?

A Yes, sir.

Q What was that conversation?

A He asked me if I did any lecturing , or if I lost any clothes, you know, by accident, or whatever, during working or did I give presentations, and I said, "Yes, I did."

Q And what did he say about that?

A He said that I was entitled to a clothing allowance because of that position and doing that sort of work.

Q Had you ever had a clothing allowance in prior years?

A No, sir.

Q Did you ask him why you would be allowed it in that year?

A He just said that I was entitled to it, and I should have been taking it, but we never discussed it before.

Q I show you Schedule A -- Miscellaneous -- Line 32 on Government's Exhibit 30 marked in evidence, and it says: "I am required to make personal appearances for my employer. I meet with and entertain president, vice-president and managers of my employer's corporate clients.

"I am required to give lectures, speeches and participate in some industrial shows. I cannot wear the same clothes in the evening as worn during the day, nor on repetitive days in the same location or with the same customers."

And then it lists thirty-six shirts; four suits, heavyweight; three suits, lightweight; three pairs of shoes; twenty pairs of socks; six sets of links; three tie tacs; and forty-two ties; and suitcase; preparation of tax fee; business subscriptions; and business dues.

Did you tell him all of those amounts that you paid?

A In this discussion, Mr. Conlin led the topic of conversation and suggested these amounts, which I agreed on.

Q He suggested them, and then you agreed to them?

A Yes.

Q Did you give him any receipts for the number of shirts

that you purchased?

A No, because one of the problems was that I spent three days a week in Chicago; consequently, doing much of my buying of clothing in Chicago. However, I do buy some in Corning, and I said it would be difficult to get those receipts in Chicago for all of that clothing. The clothing that is listed there has been purchased.

Q Is it a true statement where it says, "I cannot wear the same clothes in the evening as worn during the day nor in repetitive days in the same location and with the same [illegible]tomers"?

Is that a true statement?

A No, sir.

Q In fact, your clothing consists of normal suits, such as you are wearing now?

A That's correct.

Q And it can be worn any place?

A Yes.

Q And it is not a special kind of clothing required by your employer?

A No.

Q Did you tell Mr. Conlin at the time that he filled out your tax return the types of clothing that you bought?

A Yes, sir.

Q And did you tell him that it could be worn other than on the job?

A I don't think it was discussed that specifically.

Q He didn't ask you that question?

A No, sir, I don't recall.

MR. HOULIHAN: Thank you. I have no further questions.

* * * * * *

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DONALD MEYER,

called as a witness by the Government, being first duly sworn,

testified as follows:

DIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mr. Meyer, by whom are you employed?

A I am employed by the Internal Revenue Service.

Q And in what capacity are you employed?

A I am a Special Agent with the Intelligence Division.

Q What are your duties as a Special Agent in the Intelligence Division?

A As a Special Agent, it is my job to investigate any possibilities of criminal violations of the Internal Revenue laws.

Q Did there come a time in 1972 that you had occasion to interview Walter Conlin?

A Yes.

Q And in what connection was that with?

A This was in connection with a tax investigation that we had going with him at the time.

Q And what did it concern?

A The Andover Service Center had no record of his filing tax returns for 1969, 1970 and 1971.

Q And did you have a conversation with Mr. Conlin in 1972 concerning these returns?

A Yes, I did.

Q And when was the first time you had the conversation with him?

A The first occasion was in October of '72.

Q And what, if anything, did he tell you concerning his tax returns at that time?

A At that time he said he would have to check his records. I informed him that we had no record of his filing tax returns, and he said that he would have to check his records.

Q And did he make any statement to you concerning where those records might be?

A Not at that time, no.

Q Did you have a subsequent meeting and interview with Mr. Conlin?

A Yes, I did.

Q When was that?

A That was in November of 1972.

Q And where was that meeting?

A That meeting was at our office.

Q What, if anything, was said at that time?

A This was not what we called an initial interview with the taxpayer, where we ask him various questions.

Q Were there any conversations about his 1971 tax return at that time?

A Yes, there was.

Q And this was in November of 1972?

A Yes.

Q Do you remember the date?

A November 10th.

Q At the time of your October meeting, was there any conversation concerning where his records might be?

A I don't believe there was at the October meeting.

Q Was there at the November meeting?

A Yes.

Q And what was that conversation?

A Well, I asked him if his records were available, and he said that if they were in his office, they were available; however, if they were at his home, they were possibly destroyed by the flood.

Q And did he provide you with records sometime after that meeting?

A No, he did not.

Q Did he provide you with records at that meeting?

A No.

Q Did he provide you with records of his 1969 tax return?

A Yes, he did.

Q When was that?

A That was at the November 10th meeting. He gave me a copy of his '69 return.

Q And did he give you copies of his '70 tax return at that time?

A Yes.

Q And did he give you copies of his 1971 tax return at that time?

A No, he did not.

Q What, if anything, did he tell you concerning his 1971 tax return?

A He said that he hadn't filed his 1971 return as yet, and he produced a copy of an extension that he had filed along with a copy of a secretary's check for approximately $1,500, which he sent along with the extension.

MR. HOULIHAN: Would you mark this for identification?

(Government's Exhibit 54 marked for identification.)

Q I show you Government's Exhibit 54 marked for identification. Can you tell me what that is?

A This is Government Form 4868, which is an Application for

an Automatic Extension of Time to File a U. S. Individual Income Tax Return for 1971.

Q And there are documents attached to that?

A Yes.

Q And what are they?

A One document is a copy of a Secretary's Check payable to the Internal Revenue Service for $1,585.

Q And what is the next form?

A This form is Government Form 2688, which is an Application for Extension of Time to File.

Q That is the third page of that Exhibit?

A Yes.

Q And what is the fourth page?

A The fourth page is another Form 2688 for an Application for Extension of Time to File a Tax Return.

Q Were each of these papers given to you by Mr. Conlin?

A Yes, they were.

Q And they were given to you on November 10th, 1972?

A That's correct.

MR. HOULIHAN: I offer G-54.

MR. LEVY: No objection.

(Government's Exhibit 54 marked in evidence.)

MR. HOULIHAN: That is all the questions I have of this gentleman.

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J A N E P A Y N E,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mrs. Payne, where do you live?

A Halls Mobile Park, Painted Post.

Q And do you know the defendant, Walter Conlin?

A Yes.

Q How long have you known Mr. Conlin?

A Gosh, it has been at least four, five years.

Q And how many years did he prepare your income tax return?

A Just about that same time.

Q And did he prepare your income tax return for the year 1971?

A Yes.

Q How much did he charge for preparing your 1971 return?

A I think it was $49. I am not sure.

Q How much did he charge to prepare your 1972 return?

A One hundred and fifty-eight.

Q $158?

A Yes.

Q At the time that Mr. Conlin prepared your 1972 tax return, did you have a meeting with him?

A Yes.

Q And was that at his office?

A Yes.

Q And did you sit across from him and give him information that he wrote down?

A Yes.

Q And did you provide him with any worksheet at that time?

A Yes. I had a worksheet and receipts.

MR. HOULIHAN: Would you mark

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this for identification?

(Government's Exhibit 57 marked for identification.)

Q I show you Government's Exhibit 57 marked for identification. Is that the worksheet that you gave to Mr. Conlin?

A Yes.

Q And did you have any other records with you at the time?

A I had receipts from the different banks and credit unions and things that I had paid bills on.

Q At the time of your meeting with Mr. Conlin, did you have a conversation with him concerning the amount of medical insurance that you paid for 1972?

A Yes.

Q And how much did you tell him that you had paid in 1972?

A Oh, gosh -- I can't remember any of those. I don't know.

Q At the time that you spoke with Mr. Conlin concerning your 1972 tax return, did you have a conversation about the home in which you were living?

A Yes.

Q What was that conversation?

A I told him we had just moved back with my father, because my mother had died, and just before the flood, we moved back home, and he asked if I had owned the house, and I

said, "No."

He said, "Was your name on the deed?"

And I said, "No, because it was my father's house," and that was it. But I paid my back rent and half of the utilities and half of the taxes.

Q Did he have any conversation with you regarding the deductibility of any taxes that you paid?

A I didn't know I could, but he said I could deduct the taxes that I paid half of for my dad, and I didn't know that we could. I didn't know that you had to own the house in order to declare them.

Q Did he know at the time that you did not own the house?

A When he first asked me if my name was on the deed, I said, "No," so we just never discussed it again.

Q I show you Government's Exhibit 34 marked for identification, which appears to be a 1972 tax return in the names of Lindbergh and Jane Payne. Is that your signature and the signature of your husband?

A I signed my husband's name, because he wasn't there. He was working, so he said, "Go ahead and sign it for me," so I did.

MR. HOULIHAN: I offer Government's Exhibit 34.

MR. LEVY: I have no objection.

THE COURT: Received.

(Government's Exhibit 34 marked in evidence.)

Q G-34 marked in evidence shows taxes for real estate in the amount of $512.81, is that correct?

A I don't know.

Q I mean, that is what it says here?

A Oh, yes.

Q And you didn't tell him that you owned the house?

A Oh, no.

Q At the time you met with Mr. Conlin, did you tell him that you had certain expenses for interest during the year?

A Yes.

Q And did you tell him that you had interest expense to the Corning Glass Works Federal Credit Union?

A Yes. My husband did.

Q And the City Finance Corporation?

A Yes.

Q And "Installment purchases" in the amount of $97.12?

A I don't know what that is.

Q I show you Line 23 in your Itemized Deductions, and it says "Installment purchases, $97.12." Did you pay interest

on installment purchases of $97.12?

A I don't know what that is. Really, I don't understand what you mean.

Q Did you have any credit cards in 1972, or charge accounts?

A Just Newberry and Rockwell, but that amounted to $5 a month. I paid that.

Q Five dollars a month in interest?

A No, I mean on the bill itself. I mean the interest charges I never bothered with from those stores.

Q Did you tell Mr. Conlin when you met with him that you had installment purchases and interest on installment purchases in the amount of $97.12?

A Not that I can remember.

Q And you had a debt to Carson Finance?

A Yes.

Q And the Corning Hospital Federal Credit Union?

A Yes, the Credit Union.

Q And the First National Bank?

A Yes.

Q And Lincoln Rochester?

A No.

Q And Line 24 on the bottom shows interest paid to Lincoln First Bank of Rochester $117.18, and did you tell Mr.

Conlin that you paid $117.18 in interest to Lincoln First Bank?

A No.

Q Do you know where he came up with that figure?

A At one time I did have a loan there, but that was finished in 1970, so I don't know where that came from.

Q On the night that you met with him, did you tell him that you paid interest of $117.18 to Lincoln First Bank of Rochester?

A No.

Q On the night of your meeting with Mr. Conlin, did you have a conversation concerning any contributions that you made to the church?

A Yes.

Q And do you go to St. Vincent Church?

A Yes, I do.

Q And how much did you tell Mr. Conlin that you gave to St. Vincent Church?

A I gave a dollar a week and then five dollars to special collections when they have a special holiday.

Q Did you tell Mr. Conlin that you gave $208 to St. Vincent's Church?

A I have to stop and figure that up at a dollar a week. I

don't know.

Q A dollar a week would be fifty-two dollars?

A That is it, and when they had the special holidays, I gave five dollars to that, and that was it.

Q I show you Schedule A, Line 18, Contributions, and it shows St. Vincent Church, $208, and then it has Easter offering, Christmas offering and Thanksgiving offering.

A Yes.

Q Did you tell Mr. Conlin that you gave $208, exclusive of the holiday offerings?

A At the holidays that I went to, yes, but there were a couple on there that I don't know what they were. I don't know where they came from.

Q With regard to the special holidays, did you tell him how much money you gave?

A I said $5 to each holiday.

Q That would be an Easter offering, and how much did you tell him you gave at the Easter offering?

A Five dollars.

Q And on your return it shows "Easter offering $20"?

A Yes.

Q Christmas offering $5?

A Yes.

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Q Thanksgiving offering $5?

A Yes.

Q And it says "Lent (Six at $2.00)." Did you give a Lenten offering six times of $2 each?

A No.

Q Did you tell Mr. Conlin that you gave that?

A No. I didn't mention Lent.

Q And Bishop Relief?

A The Bishop Relief Fund.

Q How much did you give to that?

A Five dollars.

Q This shows $15, does it not?

A Yes.

Q And Worldwide Communion?

A I don't know what that is.

Q Did you give $5 to Worldwide Communion?

A No.

Q And World Day of Prayer?

MR. LEVY: Wait a minute. I object to what she gave -- what she told Mr. Conlin is the issue.

Q I will ask that question. Did you tell Mr. Conlin that you gave $5 to Worldwide Communion?

A No.

Q Did you tell Mr. Conlin that you gave $5 to World Day of Prayer?

A No.

Q Now it says "Holy days (Eight at $2.00)." Did you tell Mr. Conlin that you gave $2 on holy days other than Christmas?

A Just a dollar each time, if there is a hold day. "Holy days" are other than Christmas and those others, the big days, and when I go to a special holy day, it was just a dollar that I gave.

Q Other than those specific offerings that you made on the holy days and holidays, did you give any other money to St. Vincent Church?

A No.

Q You gave a dollar a week to the collection?

A Yes.

Q And this return shows St. Vincent Church $208. Did you give them $208?

A No.

Q Mrs. Payne, on the night that you spoke to Mr. Conlin, did you have any conversation with him concerning any flood loss that you had?

A Yes.

Q And referring to your worksheet, did you give this sheet to Mr. Conlin?

A Yes.

Q And you ultimately got it back from him?

A Yes.

MR. HOULIHAN: I offer G-57.

MR. LEVY: No objection.

THE COURT: Received.

(Government's Exhibit 57 marked in evidence.)

Q Now your worksheet is Government's Exhibit 57 in evidence, and it shows certain items of personal property that were lost as a result of the flood. Is that right?

A Yes.

Q And what is the total of that?

A $1,183.

Q Did you apply for a Small Business Administration loan?

A No.

Q That was just actual loss suffered?

A Yes.

Q Your tax return does show loss of $1,200, does it not, under "Personalty"?

A Yes.

Q Did you have any other loss to any real property that you own?

A No.

Q Did you own any real property?

A No.

Q Did you tell Mr. Conlin that you owned any real property?

A No.

Q Was there a discussion with Mr. Conlin regarding any casualty loss to any real property that you own?

A No.

Q I show you Government's Exhibit 34 marked in evidence, and it shows under "Realty: Flood -- Water six feet," and that you suffered a $3,000 loss. Did you suffer any loss to your real property as a result of the floods?

A I don't know what you mean by "real property," but everything that we had --

THE COURT: A house or land.

A Oh, no, because it wasn't our house.

Q Did you tell Mr. Conlin at that time that you didn't own the house?

A Not at that time, because it wasn't brought up again about who owned the house. From the time, you know, in the be-

ginning when he first asked about the house, then it was never discussed again.

Q At the time that you were talking about taxes, you told him that you didn't own the house, and it wasn't brought up after that?

A No.

Q Did he have a discussion with you about any depreciation or any de-valuation of the value of the house?

A No.

Q Did he ever send an appraiser to your house to determine if you lost $3,000 on any house?

A No.

Q Did there come a time subsequent to the filing of the income tax return that you had a conversation with Mr. Conlin concerning your testimony in court or at an audit?

A When we got the notice that we had to come up here, that I had to come here, then I called him because I didn't understand what it was all about, so I went over to his office and tried to find out what all this was, and he thought that I had told him at one time that the house was mine. I mean the whole thing seemed to be with the house, and I said that I didn't, because I would never say the house belonged to me. I did say at one time per-

perhaps that when my father should die, it probably would go to me, because there was nobody else. From that he might have gathered that, but I never came out and said that the house was mine.

Q Did he tell you anything that you should say regarding your tax return?

A No, just to tell them the truth, and that was it, and this is what I am doing.

Q Did he suggest to you at that time that you told him that you owned the house?

A He said I must have at one time told him my name was on the deed, but I know I did not.

Q Did he say anything to you at that time regarding your memory of what you told him?

A No.

Q This was just before you came up to testify before the grand jury?

A Yes.

MR. HOULIHAN: That is all the questions I have.

* * * * * *

M A R Y R Y D E R,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mrs. Ryder, where do you live?

A R. D. 2, Caton Center.

Q During the year 1972, in preparation of your 1972 tax return, did you use a tax preparer to assist you in preparing your tax return?

A Yes, I did.

Q Who was that?

A Walter Conlin.

Q And did you use Mr. Conlin before that?

A No.

Q And did you use him after that?

A No.

Q How much did you pay him to do your 1972 tax return?

A One hundred and sixty-three dollars.

Q I show you Government's Exhibit 33 marked for identification, which appears to be a 1972 tax return named Charles and Mary Ryder, and the signature down at the bottom, is that your signature and the signature of your husband?

A Yes.

MR. HOULIHAN: I offer G-33.

MR. LEVY: I have no objection.

THE COURT: Received.

(Government's Exhibit 33 marked in evidence.)

MR. HOULIHAN: Would you mark this for identification?

(Government's Exhibit 60 marked for identification.)

Q At the time Mr. Conlin prepared your 1972 tax return, did you go down to his office and have a conversation with him?

A Yes.

Q Did he sit across from the desk, and did you supply information to him?

A Yes.

Q Did you also have a worksheet at that time?

A Yes, I did.

Q I show you Defendant's Exhibit 60 marked for identification. Can you tell me what that is?

A That is my worksheet.

Q And you prepared this before you went to see Mr. Conlin?

A Yes, I did.

Q And did you leave that with Mr. Conlin?

A Yes.

MR. HOULIHAN: I offer Government's Exhibit 60.

MR. LEVY: May I have a preliminary question, Your Honor?

THE COURT: Go ahead.

VOIR DIRE EXAMINATION

BY MR. LEVY:

Q Mrs. Ryder, when you prepared this return and gave it to Mr. Conlin, did it have these checkmarks (indicating)?

A No, it did not.

Q And it didn't have the checkmarks on the first page behind the items?

A No.

Q And some checkmarks on the second page?

A No.

Q You don't know who put those on?

A Mr. Conlin did.

Q Did you see him do it?

A When he was asking us about them, he kept checking them off.

MR. LEVY: I have no objection.

THE COURT: Received.

(Government's Exhibit 60 marked in evidence.)

DIRECT EXAMINATION CONTINUED

BY MR. HOULIHAN:

Q With regard to your '72 tax return, did you have a conversation with Mr. Conlin at the time he was preparing your return concerning the number of miles that you drove your car that year?

A I believe so, yes.

Q Did you tell him how many miles you drove?

A We estimated, I think, about twenty-seven, twenty-eight thousand miles.

Q Twenty-seven, twenty-eight thousand miles?

A Right. My husband has a second job.

Q Did you say twenty-seven or twenty-eight thousand miles?

A Twenty-seven or twenty-eight, yes.

Q Was that on all your cars?

A On two vehicles.

Q That is all you own?

A Right.

Q I show you your tax return, and under State and local gasoline taxes is a deduction here of $299, is that correct, and that is what it says?

A That is what it says, yes.

Q Did you tell Mr. Conlin to put $299 down for your State and local gasoline taxes?

A No, I did not.

Q I show you Line 16 under "Taxes -- Building materials $141," sales tax on building materials. Did you tell Mr. Conlin that you paid sales tax of $141 for building materials in 1972?

A No.

Q Do you know where he got that figure?

A I have no idea. We don't own our own house.

Q You don't own your own house?

A No.

Q Referring to your worksheet, did you tell Mr. Conlin how much you spent for child care expenses?

A Yes, I did.

Q And what did you tell him?

A For my seven-year-old son, I paid fifteen dollars a week for the ten-month school year, and for two months this summer, twenty-five dollars a week.

Q And what was the total you told him?

A I did not tell him any total. I just told him that.

Q That totals up to $880, is that correct?

A Probably. I'm not very good at figures.

Q On your 1972 tax return, the fourth page, Form 2441, shows a total of $1,180. Did you tell Mr. Conlin that you paid $1,180 for child care expenses during the year 1972?

A No, I did not.

Q At the time that you had Mr. Conlin prepare your income tax return, did you have a conversation about the charitable contributions that you made during 1972?

A Yes.

Q Did you tell Mr. Conlin that you paid $88 to the Methodist Church?

A No, I did not.

Q How much did you tell him?

A Fifty.

Q Did you tell him that in addition to the $50 that you made

a Sunday School offering of $11?

A No, I did not.

Q Did you tell him that you made a Lenten offering of $6?

A No.

Q Did you tell him that you made an Easter offering of $20?

A No.

Q Did you tell him that you made a Christmas offering of $10?

A No.

Q Did you tell him that you made a Thanksgiving offering of $5?

A No.

Q Did you tell him that you made a Missions offering of $20?

A No.

Q Did you tell him that you made an offering to One Great Hour of Sharing of $5?

A No.

Q Did you tell him that you gave $5 to the World Day of Prayer?

A No.

Q Did you tell him you gave $10 to Worldwide Communion?

A No.

Q Did you tell him that you gave $2 to the Migrant Fund?

A No.

Q And on Schedule A, Line 18 -- Contributions, shows payment to the Methodist Church of $88, and those figures that I just read to you, does it not?

A Yes.

Q And you did not give those figures to Mr. Conlin?

A No, I did not.

Q Do you know where those figures came from?

A I have no idea.

Q Is that your handwriting that appears on the tax return?

A No, it is not.

Q Did you suffer any losses as a result of the flood in the Elmira-Corning area in 1972?

A Just personal loss, yes, the basement.

Q And did you add up a total of the amount that you lost?

A Yes, I did.

Q And what did you tell Mr. Conlin that you lost as a result of the flood?

A Personal property damage, $1,532 61.

Q $1,532.61?

A Right.

Q And that appears right on your worksheet?

A Right.

Q And that worksheet you gave to Mr. Conlin?

A Right.

Q Did you apply for a loan with the Small Business Administration?

A Yes, I did.

Q And did you receive the loan?

A Yes.

Q What was the amount of that loan that you received?

A Thirteen hundred dollars.

Q And did you tell Mr. Conlin that you received the thirteen hundred dollar loan?

A Yes.

Q And does that appear on your worksheet?

A Yes.

Q Does it show that it was already paid to you?

A Yes.

Q At the time that Mr. Conlin prepared your tax return, did you have any discussion concerning your loss to personal property with Mr. Conlin?

A Not that I remember.

Q I show you Government's Exhibit 33 marked in evidence, your 1972 tax return, and the Form 4684 labeled "Casualties and Thefts," and it shows that in the flood you lost personal property with the value before the flood of $3,382.83.

Did you tell Mr. Conlin that you lost personal property valued in that amount?

A No.

Q Do you know where that figure came from?

A I have no idea.

Q Did you discuss it with him at that time?

A Not those figures, no.

Q Not those figures?

A No.

Q Just the fifteen hundred dollar figure?

A Right.

MR. LEVY: I object to it as leading.

THE COURT: Objection is overruled.

Q You went to him to see him one night, did you not?

A Right.

Q Did you talk to him between that night and the time that you signed the return, or did you sign the return that night?

A I can't say for sure. I don't remember. I came back and got papers a week later, something like that.

Q You came back and got it a week later?

A Yes.

Q This was your tax return, which is dated March 26, 1973?

A Right.

Q Your conversation with him would have been about a week before that, is that right?

A I believe so. I can't remember the date.

Q When you went to sign the return, did you talk to Mr. Conlin?

A No.

Q And this shows that you had refunded to you $1,902.21, is that correct?

A Yes.

Q Did you receive a refund in that amount?

A Yes.

Q What did you do with it when you got the check?

A I put it in the bank.

MR. LEVY: I object.

THE COURT: Objection is overruled.

Q Why did you put it in the bank?

MR. LEVY: I object to that, Your Honor.

THE COURT: Objection is overruled.

Q You may answer.

A Because we didn't feel that we had gotten that much money

back. We never did before, so we thought we better save it.

THE COURT: You what?

A We just thought we better save it.

Q Because you had never gotten that much before?

A Right.

Q Do you have any training in preparing tax returns?

A I do not.

Q Subsequent to the preparation of this tax return for 1972, did there come a time that the Internal Revenue Service began to investigate your return and Mr. Conlin?

A Yes.

Q And at that time did you have a communication with Mr. Conlin?

A He called one time, yes.

Q And would you please tell us what was said? He called up, is that right?

A Yes. He wanted us to come to his office to talk about our income tax.

Q Did you go to his office?

A Yes.

Q What, if anything, was said at that time?

A I don't remember everything that was said, but we got the impression that it was us that was being investigated.

Q And did he tell you anything to say?

A He just told us to agree with everything that was on our tax papers, and there wouldn't be any problems.

Q And there wouldn't be any problems?

A Yes.

Q Did you tell him at that time that you didn't agree with everything that was on your tax return?

A I just don't remember what was said.

Q Did you go over your tax return at that time with Mr. Conlin?

A I don't think we did, no.

Q At the time that you went to his office?

A No, we did not.

Q Did you go over your tax return during the investigation yourself?

A Yes, we did.

Q And what did you find?

A We found all these things that was not on our worksheet, that we had never said.

MR. LEVY: I object to what they found.

THE COURT: Objection is overruled.

Q You were called to appear before the United States Grand

Jury, were you not, in September of 1974?

A Yes.

Q Prior to the time that you appeared, did you receive a call from Mr. Conlin?

A Yes. I think one Sunday night I got a call.

Q What, if anything, did he say to you at that time?

A He wanted us to meet with him and his lawyer so they could tell us what we should say and not to say, and I refused.

Q You did not see him at that time?

A I did not.

Q Did Mr. Conlin say anything about that, about your refusing to talk to him?

A He just didn't like it very well.

MR. HOULIHAN: That is all the questions I have.

* * * * * *

Rochester, New York

Tuesday, March 30, 1976

2:00 P.M.

- - -

MRS. RICHARDEAN WENDERLICH,

called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mrs. Wenderlich, where do you live?

A 386 Victoria Highway, Painted Post, New York.

Q Do you know the defendant, Walter Conlin?

A Yes, I do.

Q And did he prepare your tax returns for 1972?

A Yes.

Q And did he prepare your tax returns for 1973?

A Yes.

Q I show you Government's Exhibit 37 marked for identification, which appears to be a 1972 tax return signed with your name. Is that your signature?

A Yes.

Q I show you Government's Exhibit 38 marked for identifica-

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tion, which is a 1973 income tax return signed with your name. Did you sign that?

A Yes.

MR. HOULIHAN: I offer G-37 and G-38 in evidence.

MR. LEVY: No objection.

THE COURT: Received.

(Government's Exhibits 37 and 38 marked in evidence.)

Q Mrs. Wenderlich, did you go to Mr. Conlin for the first time in 1973 to prepare your 1972 tax return?

A Yes, I did.

Q And why did you go to Mr. Conlin?

A Well, for one thing I didn't know how to fill it out myself because I had lost a vehicle in the flood. Someone had told me that he could save me as much as it cost me in taxes to pay him.

MR. LEVY: I object to what somebody told her.

THE COURT: I sustain the objection.

Q Did you have a conversation with Mr. Conlin concerning that particular statement?

A Yes.

Q What did he tell you?

A He told me he could save me enough to pay his costs and taxes.

Q In 1972 how much did he charge you to do your tax return?

A $233.

Q And in 1973 what was the charge to prepare that tax return?

A $123.

Q Do you have a business, Mrs. Wenderlich?

A Yes, I do.

Q What is that business?

A I operate a retail flower shop.

Q And in addition to that, do you also grow flowers, or did you grow flowers?

A We did, yes.

Q And that was in 1972?

A Yes.

Q And you had a greenhouse and furnaces that are required in that business, is that right?

A Yes.

Q In addition to that, did you have other income?

A Yes. I had interest income and I also drive a school bus.

Q And you went to Mr. Conlin in 1973, I presume, for your

1972 tax return?

A Yes.

Q Did you bring anything with you when you went to talk with him?

A Yes. I took my 1971 forms and I took my W-2's and my forms from the bank for the interest.

MR. HOULIHAN: Would you mark this for identification?

(Government's Exhibit 61 marked for identification.)

Q I show you Government's Exhibit 61 marked for identification, which appears to be a 1971 tax return signed with your name. Did you bring that with you to Mr. Conlin?

A Yes, I did.

Q Did he use that to prepare your 1972 return?

A Yes, he did.

Q Did you leave it with him at the time?

A I don't remember whether I left it or he copied the figures and gave it back to me.

Q But you had this return with you at the time?

A Yes.

Q And did you also bring one of these books with you?

A Yes.

Q And which book is that?

A Both a "Paid-Out Journal" and a "Cash-In Journal." This is a Cash-In Journal, and this is the Paid-Out Journal.

Q These are both for 1972?

A Yes.

MR. HOULIHAN: Would you mark these for identification?

(Government's Exhibits 62 and 63 marked for identification.)

Q G-62 and G-63 were books that you brought with you along with your 1971 tax return of Mr. Conlin, and did you also bring other documents with you?

A My W-2's.

Q And did you bring any receipts for interest expenses or interest received?

A Yes.

Q When he was filling out your 1972 tax return, did he sit across from you and did you provide him with information?

A Yes.

Q What did he do?

A I read the figures to him. I had the monthly totals for cash income and the monthly totals for paid out, and I read them to him, and he added them for the year, the

totals.

Q That was the summary, is that right?

A Yes.

Q And he prepared that?

A Yes.

Q From the figures that you read to him?

A Right.

Q At the time that you went to see Mr. Conlin for your 1972 tax return, did you have any conversations about any loss that you suffered as a result of the flood?

A Yes.

Q And would you tell the members of the jury what that conversation was?

A He asked me what I had lost in the flood, and I told him I had lost my truck, but it wasn't at my residence. It was down in the City of Corning, and I did lose my truck, but for the property damage at a residence and a business, we only had water on the floor.

Q Did you have a discussion with him about the type of water that you had?

A Yes.

Q What did you tell him about water that came in?

A I told him the water that was in the best buildings which

are all above ground was flooded. There was four to six inches, but the water in the house, we had around three feet was surface water.

Q How did you determine that it was surface water?

A Because it was clean. It came through the walls.

Q Did you have a discussion with him at that time about water that you have on your property at times of heavy rain?

A Yes.

Q And what did you tell him about that?

A I told him, "We have almost that much water on the floor in a heavy rainstorm."

Q Where is your place of business in relationship to your residence?

A It is connected to it.

Q It is the same place?

A They are separate buildings, but there are doorways there connecting the greenhouse, and the house is connected by about ten inches of wall space. The other buildings are built right onto each other.

Q Did you suffer any personal property damage as a result of the flood?

A Some, yes -- what we had stored in the cellar.

Q And did you tell Mr. Conlin how much you had suffered, how much damage you had suffered?

A I told him what had been in the cellar. He estimated the value of it.

Q What was that value?

A I can't remember.

MR. LEVY: I object to that, Your Honor.

THE COURT: The objection is overruled.

Q Did you tell him how much damage you had suffered? How much was that?

A I can't remember the dollar value.

Q I show you your 1972 tax return under "Casualties and Thefts," Form No. 4684, attached to Government's Exhibit 37 in evidence, and it has got "Description of property -- Personalty," and it says here you lost $1,442 in personal property as a result of the flood. Did you tell Mr. Conlin that you lost that amount of money?

A No.

Q Personalty?

A Those are his figures, his estimate of what it was worth.

Q Did you have a discussion with him, in addition to what

you have already told us, about damage to your real property, to your buildings and land?

A Yes.

Q And what was that conversation?

A I told him that we had no loss, because if we had a loss, I would have a SBA loan. We only had damage, water damage.

MR. LEVY: I object unless she told him --

THE COURT: I will sustain the objection.

Q Did you tell Mr. Conlin that you did not apply for a Small Business Administration loan?

A Yes.

Q Did you tell him the reason you didn't apply for one?

A Yes.

Q What was that reason?

A We didn't lose anything.

Q What, if anything, did he say after you told him that?

A He told me that the buildings were valued at a certain amount the day before the flood, and they were valued at a lower amount the day after the flood, and that we were entitled to call the difference a depreciation in value.

Q I show you your tax return, and under "Casualties and

Thefts," Form No. 4684, attached to Government's Exhibit 37, under "Real Property," it says: "Value before casualty, $34,500. Value after casualty, $25,000," a loss of $9,500. Did you suffer $9,500 worth of damage to your real property?

A No.

Q Did you tell Mr. Conlin that you suffered $9,500 worth of damage to your real property?

A No, I didn't.

Q What did you tell him with regard to any damage that you suffered?

A I told him we had water damage, that things had to be cleaned, that there was mud, but there was nothing lost.

Q Who provided the figure of $9,500?

A Mr. Conlin.

Q Did you go over depreciation of your business property with Mr. Conlin in preparing your 1972 tax return?

A Yes.

Q And was reference made at that time to your 1971 tax return?

A Yes.

Q Your 1971 tax return was prepared by whom?

A H & R Block.

Q And the figures that Mr. Conlin used were copied off this 1971 return?

A I handed him that, and he copied the depreciation schedule off.

MR. HOULIHAN: I offer Exhibit G-61 in evidence.

MR. LEVY: No objection.

(Government's Exhibit 61 marked in evidence.)

Q Mrs. Wenderlich, according to the 1971 tax return, you had a greenhouse that was acquired in 1959 at a cost of $4,250 and had been depreciated from that date a.. the way through to 1971, is that correct?

A Yes.

Q On your 1972 tax return prepared by Mr. Conlin, it shows a greenhouse, does it not?

A Yes.

Q And the date acquired 1959?

A Yes.

Q And the cost basis $4,250, that is accurate, isn't it?

A Yes.

Q And the "Basis Regained," that was the amount of depreciation that you took in prior years?

A Yes.

Q And it has the notation, "Lost in 6-23-72 Flood." Is that in your handwriting?

A No.

Q Do you know whose handwriting that is?

A Mr. Conlin's.

Q Was the greenhouse lost in the 1972 flood?

A No.

Q And he wrote off $1,417 that year, is that correct?

A Yes.

Q In 1960 you had improvements on the greenhouse at a cost of $4,839, is that correct?

A Yes.

Q And he took depreciation for that since 1960 and all the way through until 1971, is that correct?

A Yes.

Q On your 1972 tax return prepared by Mr. Conlin, it shows improvements in 1960 of a cost of $4,839, is that correct?

A (No response.)

Q On your 1971 tax return it shows $4,830?

A It looks like it.

Q So it is just a nine dollar difference.

In any event, then it shows "Basis Regained, and this

was the amount of depreciation you took in prior years, $2,871. And then underneath that, it shows that it was lost in the flood, is that correct?

A Yes.

Q And the balance of $1,965 was written off that year, is that correct?

A Yes.

Q Did you lose the improvements in the flood?

A No.

Q In 1963 you built a bridal consulting room to your greenhouse onto your business at a cost of $2,716, is that correct?

A Yes.

Q And you took depreciation since 1963 on that in the amount of $1,630?

A Yes.

Q And there is an indication on your 1972 tax return that that was lost in the flood, is that correct?

A Yes.

Q Did you lose it in the flood?

A No.

Q And the balance of depreciation of $1,086 was written off that year, is that correct?

A Yes.

Q Now in 1965 you purchased a truck, did you not?

A Yes.

Q And the purchase price of that truck was $2,550?

A Yes.

Q And according to your 1972 tax return, in prior years you took out $2,040 in depreciation, and the next notation was that it was lost in the flood. Was the truck that you purchased in 1965 lost in the flood?

A No, we didn't own it then. It wasn't even depreciated in 1970 and 1971.

Q Now you are referring to your 1971 tax return?

A Yes.

Q And that shows the truck purchased in 1965?

A Completely depreciated in '69, and we didn't even own it in '70 or '71.

MR. LEVY: Your Honor, I object to what she owned. The question is what she told Mr. Conlin in regard to all these items. It isn't what the actual facts were. All these questions are being asked in regard to the actual facts, which are immaterial. The question really

is what she told Mr. Conlin in regard to every one of these items.

THE COURT: He is merely laying the basis for that.

Objection is overruled.

Q Five hundred and ten dollars was written off in 1972 on that truck, was it not?

A Yes.

Q Now in 1967 you purchased "Comet Equipment."

THE COURT: Don't leave it there. You already asked her about the truck, and you haven't asked her what she told Conl[illegible].

Q Did you tell Mr. Conlin that you owned that truck in 1972?

A No.

Q You did tell him that you lost that truck in the flood in 1972?

A No. I showed him my H & R Block depreciation schedule, and it is listed on there as fully depreciated in 1969, 1970 and 1971, which left zero.

Q So in '69 the balance of the depreciation on the truck was taken, and then there was nothing depreciated in 1970 and nothing depreciated in 1971?

A That's right.

Q On your 1972 tax return, it shows you purchased Comet Equipment in 1967?

A A "Comet" is a car.

Q In 1967?

A Yes.

Q For $208?

A $205.

Q $205?

A Yes.

Q There was depreciation taken in prior years of $154, is that correct?

A That is what he has on there, yes.

Q Then it says here it was lost in the flood in June of 1972, is that correct?

A That is what it says on there, yes.

Q Then a balance of $51 was written off that year?

A Yes.

Q Did you tell Mr. Conlin that you lost the Comet in the flood?

A No.

Q Did you own the Comet in 1972?

A No. We disposed of the Comet in '69, and it shows on my

H & R Block Statement of Depreciation that it was fully depreciated in '69, '70 and '71, and both columns are blank, no depreciation taken in '70 or '71 because we didn't own it then.

Q I call your attention to the next item. On August 1st of 1969 you purchased a Ford wagon for $3,025, is that what that shows?

A Yes.

Q And did you purchase a Ford at that time?

A Yes.

Q For how much money?

A $3,025.

Q And this shows that it was depreciated in prior years in the amount of $1,216?

A Yes.

Q And that it was lost in the flood?

A Yes.

Q Was that Ford wagon lost in the flood?

A No.

Q Did you tell Mr. Conlin that you lost the Ford wagon in the flood?

A No.

Q And he wrote off $1,762 for that year, is that correct?

A Yes.

Q In 1971, in October, you remodeled the boiler room, is that correct?

A Yes.

Q And that cost $797?

A Yes.

Q In prior years you took depreciation, according to your '72 return, of $13, is that correct?

A Yes.

Q And then there is a notation after that "Lost in 6-23-72 flood." Was that remodeling to that boiler room lost in the flood of 1972?

A No.

Q Did you tell Mr. Conlin that you lost the boiler room remodeling as a result of the flood?

A No.

Q And he wrote off $684 that year, is that correct?

A Yes.

Q And in May of 1971 you show a furnace in the amount of $874. It was purchased, is that correct?

A Yes.

Q In prior years it shows that you had taken depreciation in the amount of $51?

A Yes.

Q And the next notation was that it was lost in the flood. Did you lose that furnace in the flood in 1972?

A No.

Q Did you tell Mr. Conlin that you lost the furance in the flood in 1972?

A No.

Q You wrote off the balance of depreciation of $82?, is that correct?

A Yes.

Q In January of 1972 it shows "Cupboards" that were purchased for your business in the amount of $317.51, is that correct?

A Yes.

Q And you didn't take any depreciation in prior years because you just did it in 1972?

A Yes.

Q And the next notation is that it was lost in the flood of 1972. Did you, in fact, lose the cupboards in the flood of 1972?

A No.

Q Did you tell Mr. Conlin that you lost the cupboards in the flood of 1972?

A No.

Q You wrote off $317.51 that year, didn't you?

A Yes.

Q Was a table purchased in January of 1972 in the amount of $90.01?

A There was.

Q Did you purchase that table in 1972?

A Yes.

Q And there was no prior depreciation because it was purchased in '72, and then the next notation was that it was lost in the flood. Did you lose that table in the flood in 1972?

A No.

Q And the balance, or the total price of $90.01 was taken as a write-off that year?

A Yes.

Q Now skipping down to the next one, to July 26, 1972, you purchased a new truck for $3,301.95. Did you purchase a new truck on July 26, 1972?

A Yes.

Q That was written off at thirty-three and a third on the tax return, thirty-three and a third per cent, which is based on a three-year depreciation, is that right?

A Yes.

Q And that is a proper write-off?

A Yes.

Q Did you buy a truck in 1972 that was lost in the flood?

A Yes, April 29, 1972, we bought a new truck, and two months later lost it in the flood.

Q Is that truck shown on your depreciation schedule, the new truck purchased in April of 1972?

A No.

Q Was that truck covered by insurance?

A Yes, it was.

Q Was it fully covered by insurance?

A No, $100 deductible.

Q Did you tell Mr. Conlin about that at that time?

A Yes.

Q Did you purchase two new trucks in 1972, one in April and one in July?

A Yes.

Q And you purchased the one in July with the insurance money that you got from the one that was destroyed by the flood?

A Yes.

Q I call your attention to the Profit (or Loss) Statement, Schedule C, on your 1972 tax return, Government's

Exhibit 37 marked in evidence, and it shows here a business expense that you had, "Business miles -- daily, pick-up and all business errands," and that you had a total mileage of 32,418 miles, is that correct?

A Yes.

Q And 15,000 of those miles were expensed out at twelve cents per mile for a total amount of $1,800; and 17,418 miles were expensed out at nine cents per mile for an expense deduction of $1,567.62, is that correct?

A Yes.

Q Other than the trucks that appear on your depreciation schedule, did you use any other trucks or vehicles in your business?

A No.

Q And the truck was depreciated on the schedule, is that correct?

A Yes.

Q And in addition to that, business mileage was taken, is that correct?

A Yes.

Q And did you question Mr. Conlin about that?

A Mr. Conlin told me we could use either way, that we could keep tract of our actual cash expenses, or we could figure

mileage. I didn't realize he did both.

Q He told you that you could use either, and he did both, is that correct?

A Yes.

Q At the time that you signed this tax return, was that sometime after you spoke with Mr. Conlin, and he went over your books and records?

A Yes.

Q And did you go over each item in the return at that time?

A No.

Q At the time that you signed the return, did you have a discussion with him regarding the casualty loss of $9,500 that appeared on your 1972 tax return?

A No, we didn't discuss it.

Q On the night that he was preparing your return, you did question him concerning the $9,500 loss as well as the items on the depreciation schedule that were claimed here that were lost in the flood, and was there any conversation with Mr. Conlin about that?

A Not on the depreciation schedule, but on the casualty loss, there was a discussion.

Q Did you notice the depreciation schedule?

A No. I'm sorry -- I didn't even read it. I just signed it

when he gave it to me and mailed it in.

Q What was the discussion with regard to the $9,500 in casualty loss to your realty?

A He explained it to me that as the property was worth $9,000 less the day after the flood than it was the day before the flood, that we were entitled to claim a casualty loss.

Q Did he provide that figure to you, $9,500?

A Yes.

Q At that time did he have an appraisal of your property?

A No.

Q At any time prior to the filing of your 1972 tax return, did you have an appraisal on the property?

A No.

Q This is prior to filing of your '72 tax return?

A Not from Mr. Conlin, no. We have had our business appraised before, but --

Q Was it anything in regard to the loss, or any de-valuation, or anything that had to do with the flood?

A No.

Q Did you know at the time that you signed this return that you had claimed a loss to your real property of $9,500?

A Yes.

Q Did you know that you didn't have any damage to your property as a result of the floods?

A Yes.

Q Did you ask Mr. Conlin about that?

A Yes.

Q What did he tell you?

A That the property had depreciated that much in value because of the flood.

Q Do you have any tax training?

A No.

Q After preparing your 1972 tax return, did Mr. Conlin make any statement to you regarding that tax return or any tax shelter?

A Yes.

Q What was that statement?

A When he was all finished with it, he told me he had built an $8,000 tax shelter. That is what he called it. He said that I would have to earn more than $8,000 in 1973 before I would be liable for any income tax.

Q And did he explain to you what the tax shelter was?

A No.

Q In preparing your 1971 tax return, how much did it cost you to have that return prepared?

A Fifteen dollars.

Q Now in 1973 did Mr. Conlin prepare your income tax return?

A For 1973?

Q Excuse me -- in 1974 did he prepare your income tax return for 1973?

A Yes, he did.

Q And you previously identified Government's Exhibit 38 in evidence as your 1973 tax return?

A Yes.

Q And did you give Mr. Conlin any records at the time that he was preparing your 1973 tax return?

A Yes.

Q And what records did you give him?

A I had my 1972 and I had my W-2's and my forms from the bank for the interest income.

Q Did you also have this book that is here (indicating)?

A Yes.

MR. HOULIHAN: Would you mark this for identification?

(Government's Exhibit 64 marked for identification.)

Q Mrs. Wenderlich, in 1974 when you went to Mr. Conlin to prepare your 1973 tax return, you brought Government's

Exhibit 64 with you, is that correct?

A Yes.

Q Did you do anything this year different from what you did the year before?

A Yes. I did the summary myself.

Q So in 1972 he prepared the summary from the figures that you gave him?

A Yes.

Q Then this year for preparation of your 1973 return, you prepared the summary?

A Yes.

Q Did you sit across from him and give him those figures?

A No. I gave him the book, and he copied the figures out of it this year, 1973. He copied the figures out of it.

Q Would you find the page with the summary in there?

A (Witness complies.)

(Pause in the proceedings.)

Q Did Mr. Conlin go over each of these figures the night that he prepared your 1973 tax return?

A He just copied them out of the book. He has marked each total where he copied it out with his pencil.

Q Are there pencil marks at the bottom?

A Yes.

Q And it is under each total?

A Yes.

Q Can you tell me what your gross receipts were for 1973?

A Fifty-four thousand some dollars. There are two figures here that have to be added together to get that figure.

Q Give me those figures?

A $29,277.98 and $24,986.50. That is the total of $54,264.48.

Q I show you your 1973 income tax return, under Schedule C, Profit (or Loss) from Business or Profession, Total Gross Sales, and it shows $45,768.46, is that correct?

A Yes.

Q And did you tell Mr. Conlin that you only made $45,768.46--

MR. LEVY: I object to the word "only."

THE COURT: She didn't say she made that much. She said that was the gross sales.

MR. HOULIHAN: Yes.

MR. LEVY: And I objected to the word "only."

THE COURT: The objection is overruled.

Q Did you tell him that you made $45,768.46?

THE COURT: She didn't tell him she made anything. She said "gross sales."

Q Did you tell him you had gross sales in the amount of $45,768.46?

A No.

Q Now the two figures that you gave me that had to be added together, they appear on the summary sheet that you prepared?

A Yes.

Q And just below that there is some writing?

A Yes.

Q And who put that writing in?

A Mr. Conlin.

MR. HOULIHAN: I offer G-64 in evidence.

MR. LEVY: No objection.

(Government's Exhibit 64 marked in evidence.)

Q According to your records, Government's Exhibit 64, which Mr. Conlin had, it shows that your gross receipts from the business are understated on your 1973 tax return?

MR. LEVY: I object to that

conclusion.

THE COURT: I will sustain the objection.

Q You had total gross receipts of $54,264.48, which is the addition of the two figures that you read to me, and the gross receipts shown on your '73 tax return is $45,768.46, is that right?

A Yes.

Q At the time that you had Mr. Conlin prepare your 1973 tax return, did you present to him forms covering interest that you received on bank accounts?

A Yes.

Q Did you tell him that you had interest received from the Internal Revenue Service of $11.88?

A I gave him all the slips. I don't remember reading the figures off to him, but I handed him the slips that I had saved.

Q Do you have those slips with you?

A Yes.

MR. HOULIHAN: Would you mark this for identification?

(Government's Exhibit 65 marked for identification.)

Q I show you Government's Exhibit 65 marked for identification. Does that represent all of the interest income documents that you gave to Mr. Conlin?

A Yes.

Q Did you, in fact, give these to him?

A Yes.

Q And that was for preparing your 1973 tax return?

A Yes.

Q Do you have an item in there showing interest from Central Trust Company in the amount of $337.50?

A Yes.

Q Do you have an item in there showing interest from Central Trust Company of $64.38?

A Yes.

Q Do you have an item in there showing interest from Central Trust Company of $780?

A Yes.

Q Do you have an item in there showing interest from Central Trust Company in the amount of $1.09?

A Yes.

Q Do you have an item in there showing interest from Ingersoll Credit Union in the amount of $11.80?

A Yes.

Q Do you have an item in there showing interest income from Nationwide Insurance in the amount of $7.25?

A Yes.

Q Do you have an item in there showing interest income from the Internal Revenue Service in the amount of $11.88?

A Yes.

Q If my totals are accurate, that comes out to $1,214.41. I show you your 1973 income tax return, Page 1, and this is Government's Exhibit 38 marked in evidence, under Line 11, Interest Income, and what does that show?

A $880.15.

Q Did you tell Mr. Conlin that you only received $880.15?

A No, I didn't.

Q Did you give him all of the items that appear on Government's Exhibit 65?

A Yes.

MR. HOULIHAN: I offer G-65 into evidence.

MR. LEVY: May I have a preliminary question, Your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. LEVY:

Q You had three separate accounts in the Central Trust

Company?

A During the year, yes.

Q And you received interest from the three separate accounts?

A Yes.

Q And one of these accounts, was that money that you were saving for your children?

A No. It is to settle their father's estate, yes, if that is what you mean.

Q Did you tell Mr. Conlin that one of these accounts was the children's money to settle the estate?

A No. It is not their money.

Q Do you give it to them to settle the estate?

A No.

MR. LEVY: I have no objection, Your Honor.

THE COURT: It is received.

(Government's Exhibit 65 marked in evidence.)

Q Each of these accounts are held in your name, is that correct?

A Yes.

Q And you purchased certificates of deposit, is that correct?

A Yes.

Q And those are purchased periodically through the year?

A In that year they were. One was turned in, and another one bought.

Q Referring to your depreciation schedule for 1973, and this is Government's Exhibit 38 in evidence, it shows on your 1973 return that on October 26, 1970, you acquired a greenhouse, boiler and building in the amount of $13,476. Did you acquire a greenhouse, boiler and building on October 26, 1970, for $13,476?

A No.

Q Did you acquire any buildings on October 26, 1970, in any amount of money?

A No.

Q Did you tell Mr. Conlin that you acquired any property on October 26, 1970, in connection with your business?

A No.

Q Do you know where the figure $13,476 came from?

A If you add all the buildings he said I lost from the flood, that is what it comes to.

Q Did he discuss that with you at the time you were preparing your 1973 tax return?

A No.

Q In 1972 you claim you lost a greenhouse in the flood, and

in 1973 the greenhouse is back on there, is that correct?

A Yes.

Q And the original cost of the greenhouse was $4,250?

A Yes.

Q Then you had improvements onto that of $4,839?

A Yes.

Q And a bridal consulting room of $2,716?

A Yes.

Q And a remodeled boiler room of $797?

A Yes.

Q And a furnace of $874?

A Yes.

Q And those were all claimed on your 1972 tax return as being lost in the flood, is that right?

A Yes.

Q Now if you add those totals together, would that come out to $13,476?

A Yes.

Q Did Mr. Conlin have your 1972 tax return at the time that he prepared your 1973 tax return?

A Yes.

Q On your 1973 tax return, this shows that you purchased a truck in March of 1972, is that right?

A Yes. We paid for it in April, though. We probably purchased it in March.

Q Now this is on your 1973 tax return?

A Yes.

Q And it shows that it was depreciated in prior years, $376.88?

A (No response.)

Q Let me refer you to the 1972 tax return, which shows a new truck and a depreciation of $376.88 (indicating).

A Yes.

Q And that shows that it was purchased for $3,391.95, is that right?

A But that date was July. That is why I was confused. On this truck here, it looks like it was in March, and this one is listed as March, and that one it is listed as July. We did purchase one in March of '72 and in July of '72.

Q Now the one that was purchased in March of 1972 was lost in the flood, is that right?

A Yes, two months later, right.

Q And you were fully reimbursed by the insurance company?

A Yes, but the one in July could have been depreciated.

Q And that is not shown on here?

A No.

Q Except as a truck that was purchased in March?

A Right.

Q But it is the same price?

A The same price.

Q On your 1973 tax return, this shows that you drove business miles of 4,718 miles on your personal car. Did you tell Mr. Conlin that you drove your personal car 4,718 miles for use in your business?

A No. I don't have a car. I only have the one truck.

Q And that is the truck that was depreciated up above?

A Yes, and unless he meant that we used the one truck for personal business, but we don't own two cars.

Q If you used that truck only partly for business and partly for personal use, would you deduct as a business expense the part that you use for personal use?

A No.

Q And that is what that shows, does it not?

A Yes.

Q And it also labels it as "Personal Car"?

A Yes.

Q Is that in your handwriting?

A No.

Q Is this whole schedule in your handwriting?

A No.

Q Is any part of it?

A No.

Q Whose handwriting is that?

A Mr. Conlin's.

Q Mrs. Wenderlich, at the time you had Mr. Conlin prepare your 1972 and 1973 tax returns, were you aware of the tax laws and tax rules?

A No. Some of them, but not all of them.

Q Did there come a time that your income tax returns were audited by the Internal Revenue Service?

A Yes.

Q And did you go to Mr. Conlin at that time?

A Yes.

Q And what, if anything, did he tell you at that time?

A There were certain papers that he had me bring down to fill out, and he told me that he would come with me when the Internal Revenue man came to audit us.

Q Was there any talk at that time with regard to any of the figures that appear on your tax return?

A No. He said he would explain them, except for the dependents. Now the Internal Revenue questioned us on

the number of dependents he claimed, and we had to fill out a sheet for each dependent.

Q And did you do that?

A Mr. Conlin did them, yes.

Q Now at the time that the audit was being conducted, did you request that an appraisal be done on your property?

A No.

THE COURT: We will take a recess at this time.

(Recess from 3:30 p.m. to 4:00 p.m.)

DIRECT EXAMINATION CONTINUED

BY MR. HOULIHAN:

Q Mrs. Wenderlich, just prior to the recess I asked this question. Did you have anyone appraise your property? Did anyone appraise your property at your request?

A No.

Q Did anyone appraise your property at Mr. Conlin's request?

A Yes.

Q Did you know that the appraisal was going to be made?

A Yes. I knew it was going to be made.

Q Do you know who was going to do the appraisal?

A No.

MR. HOULIHAN: Would you mark

this for identification?

(Government's Exhibit 66 marked for identification.)

Q Were you at home when the appraiser came to appraise your property?

A No, I wasn't.

Q I show you Government's Exhibit 66 marked for identification. Do you know what that is?

A That is the appraisal that the man made for Mr. Conlin. I never met him.

Q Was this appraisal done for purposes of your audit?

A Yes, for the Internal Revenue audit.

Q And this appraisal was done in August of 1974, is that correct?

A Yes.

MR. HOULIHAN: I offer Government's Exhibit 66 in evidence.

MR. LEVY: No objection.

(Government's Exhibit 66 marked in evidence.)

Q Now according to this appraisal, Government's Exhibit 66, prior to the flood in June of 1972, your property was worth $48,000, and immediately after the flood, it was

worth $36,000. And this appraisal was done in August of 1974 by Millard L. Brush. And again I ask you, did you suffer damage as a result of the flood in 1972?

A Just minor damage.

Q Pardon me?

A Just minor damage, water on the floor.

Q And did you lose your greenhouse in the flood?

A No.

Q Did you lose the improvements to your greenhouse in the flood?

A No.

Q Did you lose your bridal consulting room?

A No.

Q Did you lose your Comet in the flood?

A No.

Q Did you lose a truck purchased in 1965 in the flood?

A No.

Q Did you lose your Ford wagon in the flood?

A Which year?

Q A Ford wagon purchased in August, 1969?

A No.

Q Did you lose the remodeled boiler room in the flood of 1972?

A No.

Q Did you lose a furnace in the flood in 1972?

A No.

Q Did you lose cupboards in the flood in 1972?

A No.

Q Did you lose a table in the flood of 1972?

A No.

Q As a result of the flood in 1972, did you suffer damage to your realty in the amount of $9,500?

A No.

Q Did you tell Mr. Conlin that you lost any of those items that I have read to you in the flood?

A No. I told him over and over again we only had water on the floor.

MR. HOULIHAN: I have no further questions.

CROSS EXAMINATION

BY MR. LEVY:

Q "Over and over again," how many times did you tell him?

A Four or five.

Q When?

A When we were discussing my income tax return.

Q On what date?

A I couldn't tell you the date.

Q Would this be for your 1972 return?

A Yes.

Q And how many times did you see him for that return?

A I think just one day.

Q Let's back up. When did you first meet Mr. Conlin in a business way to do your tax return?

A I think it was early 1972.

THE COURT: '73, you mean?

A No. He set up our books for us in early 1972, I believe.

Q The first time you met Mr. Conlin in a business way you were introduced by Mr. Stewart Breitwise, is that correct?

A Yes.

Q And at that time Mr. Breitwise was working for you, was he not?

A Yes.

Q And he had known Mr. Conlin, is that correct?

A Yes.

Q And he took you there, and he introduced you to Mr. Conlin, is that correct?

A Yes.

Q And Mr. Conlin then showed Mr. Breitwise how to set up a set of books, is that correct?

A Yes.

Q And Mr. Breitwise started to keep the set of books, is

that correct?

A Yes.

Q So that at least in the beginning of 1972 a set of books was set up under the direction of Mr. Conlin, and it was understood that this Stewart Breitwise was going to keep them at that point, is that right?

A Yes.

Q Then Mr. Breitwise worked with you and there came a time that he no longer kept these books. When was that?

A When the flood hit.

Q So he worked with you right up to the time of the flood and then he got some other employment?

A Yes.

Q Let's back up again. How many years did you run this florist business?

A Before 1972?

Q Yes.

A I cam there in 1951.

Q '51?

A Yes.

Q And you ran the business from then until the flood in 1972, is that correct?

A My husband and I together until he died.

Q Then there came a time that your husband died, is that right?

A Yes.

Q When did your husband die?

A '71, I think, March.

Q And then from then on you ran it yourself, is that right?

A Yes.

Q And you had the help of this Stuart Breitwise for awhile, is that correct?

A Part time.

Q Who else worked with you in 1971?

A I believe a Joyce Smith and a Clara McChesney.

Q And who else?

A They were part-time help. I don't remember anyone else.

Q Did you have anybody out in the greenhouse, too?

A Other than Mr. Breitwise?

Q Yes.

A I don't remember anyone else.

Q Before Mr. Breitwise took you to Mr. Conlin, isn't it fair to say that you didn't have a set of books?

A No.

Q You did have some?

A Yes.

Q Who kept them?

A I did.

Q And do you have those books with you?

A In my car I do, yes.

Q You have them here in your car?

A Part of them.

Q This business was a fairly steady florist business, was it not?

A Yes.

Q And had been a fairly steady business built up over the years, is that correct?

A Yes.

Q And your sales didn't fluctuate greatly, they just generally grew according to costs of things, is that right?

A Yes.

Q Now these books that you have in front of you, are these the books that Mr. Conlin set up? Are these the ones that were set up for the year 1972?

A Yes.

Q And these actually were purchased in Mr. Conlin's office?

A Yes.

Q And you bought them there and you took them back to

your business, and Mr. Breitwise started to make entries into them, is that correct?

A Yes.

Q Prior to that, did Mr. Breitwise and you have a discussion where Mr. Breitwise said, "I can't understand how you are keeping any records. You don't have an orderly set of books"?

A No.

Q You don't recollect any such conversation?

A No. We did have an orderly set of books. The Internal Revenue had okayed them more than once.

Q You went to H & R Block the year before you went to Mr. Conlin, is that correct?

A Yes.

Q And that was for the year 1971, is that correct?

A That is not the only year I went to them.

Q You went to them before that, but at least for the year 1971?

A Yes.

Q And that year you reported $25,000 in gross sales, is that correct?

A I can't remember.

Q I show you Exhibit G-61. It has gross sales of twenty

thousand some dollars, is that correct?

A It is gross cash receipts.

Q Gross cash receipts?

A Yes.

Q Doesn't it say "gross sales $25,000 --"

What does it say (indicating)?

A Gross receipts.

Q Is that both cash and paid receipts?

A Yes.

Q So that your sales were $25,061, were they not?

A Not necessarily. Cash receipts and sales don't necessarily come to the same thing.

Q Were you on a cash basis that year?

A Yes.

Q And your cost of goods sold was $16,027, making a gross profit from the business of $9,034, is that correct?

A How did you say that, "gross profit"?

Q Yes.

A Yes.

Q Are you certain that you gave this return, Exhibit 61, to Mr. Conlin?

A Yes, I am positive.

Q You are certain of that?

A I am positive.

Q Did you give Mr. Conlin a schedule of your depreciated property when he did your 1972 return?

A The one that's stapled on that form right there, yes.

Q Did you give him a separate one?

A No.

Q Did you read to him the items?

A No.

Q And you actually gave it to him and that is his sole source of information?

A For the depreciation schedule, yes.

Q Now the first year Mr. Conlin kept your books --

A He didn't keep my books.

Q All right, "suggested" how to keep your books, and the first year he did your income tax return, the same column, your gross receipts were $40,652, were they not?

A Yes.

Q And the next year they were $45,768, were they not?

A I think we argued that before. It is fifty-four instead of forty-five.

Q But the amount of your return was $45,768?

A Yes.

Q Do you recollect that in both of these returns with Mr. Conlin you asked for an extension of time to file?

A I didn't ask for an extension of time. Mr. Conlin asked for an extension of time because he didn't have time to do them.

Q You signed a return in which a request was made for an extension of time?

A Yes, I did.

Q So th[illegible]over your signature a request for an extension was made, is that correct?

A Yes.

Q And with those returns you sen[illegible] some money along with that extension, is that correct?

A Yes.

Q And with the one for 1973 you sent $336, did you not?

A I think so.

Q As a matter of fact, hadn't Mr. Conlin prepared an extension and an estimate to go along with it where you were supposed to send $736?

A I think it was seven hundred and eighty-eight, wasn't it?

Q It was in the seven hundreds?

A Yes.

Q You told Mr. Co[illegible]lin's secretary, did you not, that you

didn't owe that kind of money and that your income didn't call for a seven hundred dollar or a seven hundred and some dollar payment of the tax, did you not?

A No. I told Mr. Conlin -- I said, "You told me last year you had built me up an $8,000 tax shelter, that I would have to earn $8,000 before I owed any tax."

If I had known I was going to owe tax, I certainly would have paid a quarterly.

Q But you told him that 736 was too much, and it should be reduced to 336, did you not?

A No, I did not.

Q Who did you have this talk with, Mr. Conlin or his secretary?

A Mr. Conlin.

Q And you sent along a check for $336?

A Mr. Conlin told me maybe he had figured it wrong, that he would re-figure it. He re-figured it and called me back and told me that perhaps it would be closer to 336. And he said that he would that typographical error on the seven hundred, whatever it was, and I made the check out for what I did feel I owed.

Q And you did feel that you owed $336?

A He told me that is what I owed.

Q And you didn't feel that you owed seven hundred and some dollars?

A No, because he told me he had a tax shelter built up. And I have always paid my quarterly, and I would have paid it quarterly last year if I thought it was going to come anywheres near seven hundred and some dollars.

Q So the history of your earnings was a gross sales of about $25,000 in '71 when H & R Block did it. Then it rose to 40,652 the first year Mr. Conlin did it?

A I can tell you one reason for that. We didn't include sales tax in H & R Block as cash receipts. We also didn't count it as an expense. With Mr. Conlin, we counted the sales tax as a tax receipt and out as a cash expense.

MR. LEVY: I move to strike that as not responsive to my question, Your Honor.

THE COURT: Motion denied.

Q Can you answer this question: Is the history of your sales that the report was $25,061 for 1971 when H & R Block did it? Can you answer "yes" or "no"?

A Cash receipts, yes.

Q And then it was $40,652 in 1972, the first year that Mr. Conlin did it, is that correct?

A Yes.

Q And the next year that Mr. Conlin did it, the return says $45,768, is that correct?

A It is what the return says, yes.

Q Now the government audited your books, did they not?

A When?

Q In the year 1974?

A Yes.

Q And they went back and they audited '71, '72 and '73, did they not?

A Yes.

Q And when they audited your books, you were dealing with Revenue agents, is that correct?

A Yes.

Q And you talked to Revenue agents at various times when they were doing the audit, is that correct?

A One agent.

Q And what was his name?

A I think his name is Robert McIntyre.

Q And he is a Special Agent in the Criminal Division, is he not?

A I don't know.

Q Did he tell you what he was?

A He probably did. I don't remember.

Q And he was auditing your books in regard to a criminal investigation, is that correct?

A I don't know why he was auditing it.

Q Did he tell you that he was auditing your books in regard to a criminal investigation?

A No, not that I remember -- just an incorrectly filled-out form.

Q Did he tell you that you could have some responsibility in regard to the audit of the books?

A I don't remember him saying that.

Q Were you told that you could have some civil liability, that you might have to pay additional sums because of the audit of your books?

A I don't remember him saying it, but I knew if they were filled out wrong, I had to pay it.

Q So that you knew that if there was something wrong with your books that you had to pay, is that correct?

A Yes.

Q And how long a period did this audit take?

A More than a week -- well, I believe six days.

Q Was that during the time that you signed certain statements for Mc. [illegible]ntyre?

A When he was all through, I signed his report.

Q And did you sign certain statements with Mr. McIntyre about your relationship with Mr. Conlin?

A Yes.

Q And you signed those statements at the same time that he was conducting the audit, is that correct?

A No. It was when he was all through.

Q And when you signed the papers, you signed the statement about Mr. Conlin at the same time?

A Yes.

Q What was happening at that point was that you were entering into an agreement with the government about how much you owed, is that correct?

A I don't understand that.

MR. HOULIHAN: Objection, Your Honor. I think there is a confusion here between the criminal investigation and the civil audit, and Mr. Levy is questioning as though it was just one occurrence.

MR. LEVY: He will have an opportunity to question the witness, Your Honor.

MR. HOULIHAN: I just think it is misleading.

THE COURT: Objection is overruled.

Q When they were finished with the audit, you entered into an agreement with him as to how much you owed, did you not, and agreed to pay a certain amount of money?

A I don't know why he calls it an agreement. We didn't agree on an amount. He told me what I owed, and I paid it.

Q You agreed to pay it?

A Yes.

Q And you didn't contest any of it?

A No.

Q As a matter of fact, after they started the audit, you first went to Mr. Conlin's office, did you not, and talked it over with him?

A When I got the notice from the Internal Revenue man that certain papers had to be filled out, and he would be there on a certain day.

Q And Mr. Conlin did fill out one return for you in relationship to your number of dependent children, did he not?

A There were five. Each dependent had to have a separate one filled out.

Q But he filled out the forms in regard to that, is that correct?

A He started them. He didn't finish them.

Q And then you did have a discussion with Mr. Conlin about certain facts, did you not, that would be coming up in the audit?

A Yes.

Q And you went over with Mr. Conlin various items of damage that had been put in the tax return, is that correct?

A I remember discussing the dependents with him. I don't remember discussing the flood damage with him.

Q Do you remember a meeting with Mr. Conlin on August 12, 1974?

A I don't remember the date, but I do remember going to see him, yes.

Q And it was in the evening a little after 8:00 p.m.?

A I couldn't tell you.

Q And the meeting lasted about an hour and twenty minutes, until about 9:40?

A (No response.)

Q You don't recollect that?

A No.

Q But you do recollect being there about that time?

A Yes.

Q Was it in his office?

A Yes.

Q And did you at that time give Mr. Conlin substantiation for the flood loss?

A No.

Q Did you state to him at that time that there was five feet of water in your cellar?

A Not flood water -- water.

Q All right, water in your cellar. And did you state to him at that time that the heating plant was ruined in your cellar?

A No. The heating plant was under water.

Q It was under water in your cellar?

A Yes.

Q And did you state to him at that time that you spent about $3,000 just to replace furnishings in your house?

A Yes, I did, but that wasn't in the flood.

Q Didn't you state to Mr. Conlin that the foundation of your house had been damaged?

A No.

Q Did you state whether or not there were cement breaks and cracks?

A No.

Q Did you state whether the cement floor was heaved and cracked?

A No.

Q Did you state whether or not you lost your freezer, washer and dryer?

A I did lose an old freezer and a washer and dryer we weren't using. They weren't operable.

Q Would you state whether or not you lost a freezer, washer and dryer?

A Yes.

Q Did you state that your furnace circulating pump was gone?

A No.

Q Did you state that the rest of your furnace required cleaning and repairing and it was a forced hot water system?

A Yes.

Q Did you state that you had to put in a new hot water heater?

A Yes, but it was a rented one. It wasn't ours.

Q Did you state whether or not you had to put in a new hot water heater?

A Yes.

Q Did you state whether or not you had to change the hot water heater controls?

A No.

Q Did you state whether or not you hired a plumber to do this?

A No.

Q Did you state that in your business a well water pump was destroyed in the flood?

A We run three wells. I'm trying to think -- no, it wasn't destroyed.

Q I'm not asking you whether it was or wasn't. Did you tell him whether or not a well water pump was destroyed?

A No, I did not tell him that.

Q As a matter of fact, you had three wells?

A Yes.

Q And you had a well for the house?

A Yes.

Q And you had a well that you used in your greenhouse?

A Yes.

Q And you had another well that you used in your business?

A And greenhouse.

Q So you had two wells that you used in the greenhouse and one in the house, is that correct?

A Yes, and at the time of the flood we were only using one of them.

Q As a matter of fact, after the flood one of these wells, the one you were using in your house, you couldn't get the water in that well approved, isn't that correct?

A No.

Q Did you ever have it tested?

A No.

Q You never did?

A No.

Q Did you ever have any of the three tested?

A You mean after the flood?

Q Yes.

A No.

Q Did you change the piping from one of these wells after the flood so that you bypassed one of these wells that was damaged in the flood?

MR. HOULIHAN: Objection, Your Honor. I think she already testified there was no damage to the wells.

THE COURT: Objection is overruled.

Q Did you do that, to your recollection?

A We did change over a well once, but I believe it was way

before the flood.

Q Did you move out of your house for awhile as a result of the flood?

A Yes.

Q How long?

A I believe ten days.

Q When the flood receded, did that leave sediment in your gardens that you grew flowers in?

A Not flowers, no.

Q Or your nursery stock?

A We grew pumpkins.

Q What about the greenhouse? Was there sediment and water in your greenhouse when the flood receded?

A Yes.

Q As I understand it, you have stands or racks in which you put your materials in the greenhouses?

A Yes.

Q And were any of those stands and racks destroyed in the flood?

A No.

Q Were all the racks taken out after the flood? As a result, after the flood were the greenhouses cleaned and repaired completely and then put back in?

A No.

Q In none of the greenhouses?

A No. Can I explain it? They set on cinder blocks. The benches rest on cinder block posts. There is nothing that can be taken out.

Q Did you tell him that the electrical system was not affected by the flood, but it was turned off in the area, in your business area?

A No. I think the electricity went off with the flood. The electric went off with the flood.

Q Did you pick up everything off the floor in anticipation of the flood?

A Yes.

Q Did you tell him that the new truck was caught in the flood?

A Yes.

Q Did you tell him that you had no SBA loan?

A Yes.

Q Did you tell him that five people spent twenty days just cleaning up the greenhouse?

A No.

Q You didn't tell him that?

A No.

Q Did you ask him whether or not you could claim damage to the crops as a result of the flood?

A I don't remember asking him.

Q Did you tell him you had damage to your crops?

A Yes.

Q Did he tell you that this would be written off in the cost of sales?

A I don't remember it.

Q Did you tell him the land was eroded and washed away?

A No.

Q Did you tell him that in your garden new earth had to be hauled in?

A No.

Q Did you tell him that the Town Assessor had given you a twenty-six per cent reduction because of the loss from the flood?

A Yes.

Q And had the Town Assessor reduced your assessment twenty-six per cent as a result of the flood?

A For one year.

Q Did you tell him that you had to replace the carpeting in your house as a result of the flood?

A No.

Q Now you do know that a man did come and make an appraisal of the flood damage, do you not?

A Yes.

Q And you know as a matter of fact that your son showed him through the property, do you not? Did your son tell you that he showed him through?

A Yes.

Q And he took him around and showed him the greenhouses and showed him the inside of your house and all around?

A Yes.

Q And you were told that after this man made an appraisal, that it was his opinion that your real estate was damaged to the extent of $12,000 as a result of the flood, is that correct?

A The man said that, yes. This was two years after the flood, and he never saw my place before the flood.

Q But it was his opinion that your property had been damaged to the extent of $12,000 as a result of the flood, is that correct?

A That is what he said, yes.

Q And that was his opinion, is that correct?

A Yes.

Q After you had this discussion with Mr. Conlin at his

office on that August evening in 1974, from then on you never talked to Mr. Conlin about anything, is that correct? That was the last time you talked with him?

A No. Mr. Conlin came the first morning that the Internal Revenue man came. He stayed at the morning session and didn't come back.

Q As a matter of fact, you took care of your matters with Internal Revenue yourself after that, and Mr. Conlin had nothing to do with it after that?

A Right.

Q And Mr. Conlin wasn't at any of these audits and wasn't asked his explanation of any of these entries on the tax returns, is that correct?

A No. He was asked to explain the difference between the 54,000 and the 45,000, and he said he had turned the figures around. He was there when we got that far with the audit.

Q Now about turning the figures around, did Mr. Conlin tell you that in 1973 that you had a possibility of changing your bookkeeping system so that it was on an accrual basis rather than on a cash basis?

A No.

Q Did you talk about being on an accrual basis and a cash

basis?

A Not that I remember.

Q Do you know what that means?

A Yes.

Q Being on a cash basis you pay income tax on only what you actually receive, is that correct?

A Right.

Q And being on an accrual basis, you pay income tax on what is owed, is that correct?

A As far as I know, yes.

Q And did you have a discussion with him in regard to the 1973 tax as to whether it would be better for you to go on an accrual basis or on a cash basis?

A I don't remember anything about it.

Q When you left him, did you tell him that you would look up certain things to determine which would be the best basis?

A I don't remember talking to him about it.

Q How many vehicles did you have in this business in 1972?

A We had one truck until we lost it in the flood. And then I used a school bus to deliver with until I could purchase another vehicle in July of '72.

Q So you only had one vehicle?

A Right.

Q What kind of a vehicle was it?

A The first one was a Ford wagon, a van. The second one was a Chevy van.

Q Now this Comet that you had, that was an older car and you got rid of it?

A Yes.

Q And you had that in addition to the truck at the time?

A In 1968 we had a truck and a Comet.

Q In regard to this truck, did you use it both for your personal use and for the business?

A Yes.

Q And that was the only car that you had in the family, is that right?

A No. I have sons living away from home that have cars.

Q But it is the only car that you have?

A It is the only car that I have, yes.

Q This son that showed Mr. Brush through the property, what is his name?

A I have no idea. I have seven sons, and I don't know which one showed him through.

Q How many were home in '72, how many lived at home?

A How many children?

Q Yes.

A Six lived at home until the flood, and then one of them moved out after the flood.

Q And they helped you in your business also?

A Yes.

Q When you gave these papers to Mr. Conlin in regard to your interest payments, is it possible that you didn't give him all of them, that you might have missed one of them when you gave it to him?

A It is possible.

Q Did you have any talk with him about an account that you didn't consider to be yours and that you were keeping for the children?

A I think you have it a little mixed up, but yes, there is an account. That is the one with the interest income.

Q You did talk to him about an account that was not yours and it was kept for the benefit of the children?

A No, it is mine. It was an insurance policy, and when my husband died, that came to me. And I have kept it. And we were divorced before my husband died, and if there is a property settlement, half of the property that my husband owned, he left to the children, and none of them were of age when he died. So that $20,000 that is in

the bank, if we decide to sell the property to me, it will go to pay their half of it.

Q So as a result of this property settlement in the divorce, part of this money was kept in a bank account, is that correct?

A It is a certificate of deposit.

Q But you kept it segregated, is that right?

A Yes, it is separate, yes.

Q After this Stewart Breitwise left your employment after the flood, you kept the books and records yourself, is that correct?

A I kept them part of the time before he left, too. We both worked on them, but after he left, I kept them, with another little girl helping me.

Q That would be in Exhibits G-62 and G-63, is that correct?

A The paid-out one I did myself, but the other one they helped on, yes. The other one is labeled "paid out," and the other is labeled, "Cash Journal."

MR. LEVY: I don't believe these are in evidence. I would like to offer G-62 and G-63.

MR. HOULIHAN: I have no objection.

(Government's Exhibits 62 and 63 marked in evidence.)

CROSS EXAMINATION CONTINUED

BY MR. LEVY:

Q As a result of the divorce settlement, were you given the business?

A No. There never has been a divorce settlement.

Q It started, is that right?

A We started it, and on the day that the judge was to give the decision, my husband died. There never has been a settlement.

Q The first year you came in, Mr. Conlin in '72 made his own summaries from those books, Exhibits G-62 and G-63?

A Yes.

Q And the second year you made your summary and then you read them to Mr. Conlin?

A No. The first year I read the figures to him, and he made the summary. The second year I handed him the book with the summary all made.

Q Did he ask you to leave the books with him?

A I don't believe so.

Q Did he ask you to bring in the books in preparation for the audit?

A Bring in the books to him?

Q Yes.

A No.

Q He didn't ask you to bring them in?

A No, I don't think so. I don't remember.

MR. LEVY: Your Honor, it is very close to five o'clock, and we would, if possible, like to look at these books in preparation for a continuation of this examination. We will be ready certainly tomorrow morning, if the Court could give us permission to take these books. We would like to do that.

THE COURT: I was hoping that we might finish this, because the witness is from out of town. Well, maybe it is not possible, but how long would it take you?

MR. LEVY: We want to look through them, Your Honor.

THE COURT: I know you do, but how long will it take you to finish with this witness?

MR. LEVY: It will take us two hours, and probably --

THE COURT: I am very reluctant to keep a witness overnight if it can be at all avoided. In fact, I would be willing to sit another hour if need be.

THE WITNESS: Well, I have young children at home, too.

MR. LEVY: Your Honor, if we could have these books, we are willing to release this witness, and we will bring out the facts in another way. But we would like to have the opportunity to take these books tonight if we could.

THE COURT: They are in evidence, and they may be used.

You are now releasing this witness?

MR. LEVY: Yes. We have no further questions.

THE COURT: All right. We will adjourn until tomorrow morning at ten

o'clock.

MR. HOULIHAN: Your Honor, may I examine this witness on redirect examination for a short time?

THE COURT: All right, go ahead.

REDIRECT EXAMINATION

BY MR. HOULIHAN:

Q Mrs. Wenderlich, Mr. Levy on cross-examination asked you if it was possible that you didn't give these interest reports represented by Government's Exhibit 65 to Mr. Conlin, and when you gave those things to me, you pulled them out of an envelope, did you not?

A Yes.

Q May I see that envelope?

A Yes.

(Envelope handed to Mr. Houlihan.)

Q And this is an envelope in the name of Walter Conlin, is that right?

A Yes.

Q Is that the envelope that Mr. Conlin gave back to you with your papers in it?

A Yes.

Q And that was after the return had been done?

A Yes.

Q You pulled all of these reports out of that envelope, did you not?

A Yes.

Q Now at the time that you had this conversation with Mr. Conlin, and that was around August 12th of 1974, is that correct?

A Yes.

Q And that was a year after you filed your 1972 return, and this was filed in June of 1973? It was a year and two months after the '72 return had been filed?

A Yes.

Q Well, this is dated April 20th, 1974, so that would be some five months after the return was signed?

A Yes.

Q Did you lose your furnace in the flood?

A No.

Q And you did have to pay someone to clean that furnace, didn't you?

A Yes.

Q How much did you pay?

A Forty-eight dollars.

Q Forty-eight dollars?

A Yes.

Q At the time of this meeting in 1974 with Mr. Conlin, you told him that you purchased $3,000 in furnishings for your house, is that right?

A Yes.

Q Were those to replace furniture that you lost in the flood?

A No.

Q Did you tell him at that time that it was to replace furniture lost in the flood?

A No.

Q Was there any discussion about any furniture purchased in the amount of $3,000 a year in 1973 when you were filling out your 1972 tax return, or in 1974 when you were doing your 1973 tax return?

A I mentioned I had bought new furniture, yes, but it had nothing to do with the flood.

Q And you told him that?

A Yes.

Q Did you have any damage to the foundation as a result of the flood?

A No

Q Was the cement floor heaved and cracked?

A Not that I could see, no.

Q Mr. Levy asked you about changing over the pipes that went to a well. Was that done before or after the flood?

A Before the flood.

Q How did you clean up the greenhouse after the water had left?

A I just took a hose to it. The one greenhouse had a dirt floor with two cement sidewalks, and the rest of it is all dirt. You take a hose and wash the dirt off the sidewalk down onto the ground. Both greenhouses are dirt floors.

Q Did any of your racks or anything in the greenhouse suffer any damage as a result of the flood?

A Only getting wet, nothing got lost.

Q Nothing got lost?

A Nothing got lost, just cleaned up.

Q And the Town Assessor gave you a twenty-six per cent reduction for one year?

A He gave us a reduction. I can't tell you that twenty-six is the exact amount, but he did give us a reduction of one year of taxes. I gave Mr. Conlin the slip.

Q When did you give him that?

Is that in this August meeting of 1974?

A No. We paid our taxes in the end of '73. It would have

been when I did my 1974 taxes, I believe.

Q So that taxes that were shown on your '73 return would reflect this twenty-six per cent, this reduction in the assessment, is that right?

A Yes, because that reduction came long after that, long after the flood.

Q And was this just limited to your property, or was it everybody in the Corning area?

A I believe the whole Corning area. I don't know.

Q Now there is a Mr. McIntyre that spoke with you regarding a criminal investigation against Mr. Conlin. Do you remember Mr. McIntyre?

A Yes.

Q And in addition to that, you also had someone talk to you and go over each item of your income tax for civil purposes, did you not, auditing your return to establish whether you had specific exemptions, whether you suffered any damage to your property and other items on your tax return?

A It was Mr. McIntyre for both.

Q For both?

A Mr. McIntyre was the only one I talked to that I remember.

Q Do you remember Mr. John Werda?

A Yes, I remember Mr. Werda, yes.

Q Were they together?

A I only remember one man coming in to do the audit. I only remember one man coming in.

MR. HOULIHAN: Would you mark this for identification?

(Government's Exhibit 67 marked for identification.)

Q I show you Government's Exhibit 67 marked for identification, which is an affidavit signed by you on October 8, 1974, and witnessed by Mr. McIntyre. Do you recall making that affidavit?

A Oh, yes.

Q Was that the same person that did your audit?

A No.

Q That refreshes your recollection that there were two different people?

A Yes, but they didn't come together. They didn't come at the same time.

Q At this meeting in August of 1974, and this was with Mr. Conlin in preparation for the audit, the meeting with the Internal Revenue Service agent?

A Yes.

Q And this is where you went over, and he asked you questions, and you told him answers, is that right?

A Yes.

Q You didn't tell him anything differently than what you have testified to previously, have you?

A No.

Q With regard to the interest income, did you tell Mr. Conlin that the money that was in the bank and certificates of deposit was not in your name?

A No.

Q Is the money in your name?

A Yes.

Q And the interest is charged to you, is it not?

A Yes.

Q And all of these items that appear on Government's Exhibit 65 are in your name?

A Yes.

Q Mrs. Wenderlich, at the time of preparation of your 1971 tax return, you show a gross sales of some $25,000?

A Gross cash receipts.

Q Gross cash receipts?

A Right.

Q And the next year that increased to forty thousand?

A To forty thousand.

Q Was that increased as a result of Mr. Conlin's doing your books for you?

A No. It was an addition in sales tax -- in the $25,000 cash receipts for '71, sales tax is not added in. In the 40,000 for 1972, sales tax is added in.

Q When you say "sales tax," you collect sales tax from every sale that you make, is that right?

A Yes.

Q And that is seven per cent, is that right?

A Yes.

Q Then you pay that over to the State?

A Yes.

Q And that isn't a profit for you?

A No.

Q In 1971, instead of showing gross sales and then subtracting sales tax, you did that all at once?

A He only entered in our books the actual sale, not the tax.

Q In 1972 and in 1973 you showed gross cash sales plus the taxes and then deducted those taxes later on, is that right?

A Yes.

Q In 1961 were your cash sales, in fact, $25,061?

A Cash receipts, yes.

Q Cash receipts?

A Yes.

Q And in 1972 were, in fact, your gross sales $40,652.37?

A Yes.

Q And in 1973 your cash receipts were fifty-four thousand something?

A Yes.

Q These increases were not as a result of bookkeeping errors that you made in previous years, were they?

A No.

Q And in fact you kept the books prior to the time Mr. Conlin set up these set of books for you?

A Oh, yes.

Q And those books were audited before by the Internal Revenue Service?

A Yes.

Q And they were approved?

A Twice, yes.

Q Now in preparation of your 1972 tax return, did you tell Mr. Conlin that you suffered any loss as a result of the flood?

A My truck, yes.

Q Just your truck?

A Yes.

Q You never told him that you lost the greenhouse or the improvements or the boiler room?

THE COURT: A lot of this is just repetition.

MR. HOULIHAN: I have no further questions.

RECROSS EXAMINATION

BY MR. LEVY:

Q You say the difference in these gross sales from '71 to '72 is the result of the fact that the sales tax was included in one and excluded in the other?

A Part of it.

Q Do you know how much the sales tax was in 1972?

A No, I don't.

Q It is in your return, approximately two thousand dollars. Does that refresh your recollection?

A (No response.)

MR. LEVY: Well, the return will speak for itself.

Q How many times did you talk to Mr. McIntyre, this Special

Agent?

A I don't remember.

Q More than once?

A I believe at least twice.

Q Did he talk to you at your home?

A No, I think at my business.

Q Did he come to your business and talk to you?

A Yes.

Q And you signed the statement for him on October 8, 1974, is that correct?

A I signed it, but I don't remember the date.

Q Did you talk to him in September of '74?

A I couldn't tell you the date.

Q Where else did you talk to him other than at your business?

THE COURT: They are right together?

A Our house and business are right together, right.

Q For how long a time did you talk to him when you talked to him in October?

A I can't tell you.

Q Was anybody else present?

A I don't believe so.

Q When you talked to this Mr. Werda, how long did you talk to him?

A He was there for, I believe, six days.

Q At your house?

A At my house.

Q For six days?

A Yes.

Q And was that about the same time that you talked to Mr. McIntyre?

A No, it was before that.

Q And you talked to Mr. Werda after this meeting with Mr. Conlin in August of 1974, is that correct?

A Yes.

Q And you talked to him at the Elmira office once?

A I don't believe so I think he came to the business each time.

Q You talked to him once with Mr. Conlin present?

A Yes.

Q And then he was there for six days more without Mr. Conlin being there?

A Five and a half days more.

Q Five and a half days more?

A Yes.

Q Did he ask you for these various books and records?

A Yes.

Q And he asked you questions about what was in your return?

A Yes.

MR. LEVY: I have no further questions.

MR. HOULIHAN: I have no further questions.

THE COURT: We will adjourn until tomorrow morning at ten o'clock.

MR. LEVY: May I hand up to you a memorandum so you will have it, Your Honor? And I will give a copy to my opposition.

THE COURT: All right.

(At 4:50 p.m., an adjournment was taken to Wednesday, March 31, 1976.)

* * * * * *

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WALTER R. CONLIN,

the Defendant, called as a witness in his own behalf, being

first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LEVY:

Q Mr. Conlin, how old are you?

A (No response.)

Q When were you born?

A June 21, 1919.

Q And what was your education?

A Following high school, I was self-educated, reading books, extension courses in the Air Force, and I attended the Marshall College, Huntington, West Virginia, for a year.

Q And what courses did you take there?

A Courses pertaining to aviation.

Q Did you have any courses in accounting?

A Formally, it was the United States Armed Forced Institute, through the University of Michigan for one year.

Q So that your formal education in accounting was one year with the United States Armed Forced Institute?

A Yes.

Q And that was one year?

A Yes.

Q And your family consists of a wife and how many children?

A Six sons -- one deceased.

Q And what is the age of the youngest and the age of the oldest?

A Twenty years -- thirty-two years.

Q Do you live at home with your wife?

A Yes.

Q Did you in 1973?

A Yes.

Q Now the two ladies that work for you described the operation of your office during the year 1973?

A Generally.

Q What about these hours that you worked for the tax year, in 1973? Will you tell us basically so that we can understand from you how much you worked?

A I liked an early morning hour so I could work without interruption.

Q About what time was that, usually?

A Many is the time that I begin at four and five.

Q And then how late would you work?

A Usually midnight, eleven p.m.

Q There was some testimony that sometimes you stayed through the entire night at the office, is that correct?

A Yes, with about two half-hour naps on the floor.

Q And about how many nights a week did you do that in the

year 1973?

A Without reservation I could estimate an average of at least one to two nights at least most of the weeks in the year.

Q How many people did you see in a usual day for interviews?

A An average day of appointments would be twelve.

Q Twelve people?

A Yes.

Q And in addition to the twelve people, did you see other people in between?

A Yes.

Q Did you see people on Sundays?

A Yes.

Q Did you see people early in the morning before eight o'clock?

A Yes.

Q How early were the earliest appointments that you made?

A The earliest appointment I had was four a.m. Generally, the early morning appointment would be five to six.

Q What about meals? What is your recollection about your eating habits when you worked at your office in the year 1973?

A My wife always made certain I had a container of juice or water, and she always made certain that a sandwich was

brought in for me, and frequently, a tray would be brought in, and she would stand guard while I ate it and force me to eat it for supper.

Q Did your family help in your office?

A Yes.

Q What did they do?

A They kept the files up to date. They worked feverishly to make sure that everyone was covered with extensions that were trying to come in for appointments. They made phone calls for me, and they sought information from clients that we were waiting for, and they made deliveries and pickups.

Q The actual technical work in regard to the returns was done by who?

A By myself.

Q What held was your office manager?

A She was responsible for receiving all incoming information that was brought into the office, relegating it to the routine office work, delegating the work to Miss Peterson and others and the family members that helped. The family members checked distributions for me, too, and she was responsible for all the tax returns -- all the payroll returns for clients, and she did an awful lot of support

work for myself.

Q Did you make a greater charge in regard to preparing returns where there was flood casualty?

A Of course.

Q What is your answer?

A Yes.

Q And what was the reason for the greater charge?

A The additional work.

Q And do you recollect whether or not these casualty flood losses required additional work?

A Very much so.

Q And in what aspect?

A More than double and also more work on behalf of my staff, too.

Q Did you keep track of your time in regard to various pieces of work that you did?

A I tried to be very accurate on timekeeping for the work I did after hours on clients' work as well.

Q Did you have a standard charge during '73 on a per hour basis for your work and your overhead and the work of your people?

A Yes.

Q How much was that?

A Forty dollars per hour.

Q Do you recollect that day in January, 1974, when you were arrested?

A Yes.

Q Can you tell me, did you meet with Mr. Gill on that morning?

A Yes.

Q And how did it come about that you were going to Elmira that day with Mr. Gill?

A To keep an appointment with Mr. Cristofaro of the Small Business Administration in Elmira.

Q And how was that appointment arranged?

A By telephone. Mr. Gill called me and said Mr. Cristofaro had called him. Mr. Gill came over to be certain that I confirmed it with Mr. Cristofaro. I did that morning.

Q On that morning did you see Mr. Gill before you started out with him?

A Yes.

Q And what did you do before you left your office?

A Pertaining to Mr. Gill, I got the SBA application and reviewed it with him and then reviewed the Form 1040S with him, 1970 and 1971 1040's. Then we agreed that I would pick him up in front of his store and go in the

same car. So he left with his box of records, and I asked Mrs. Beach to rush the copies that I could give to the Small Business Administration, of his 1040's for '70 and '71.

Q On that morning you asked Mrs. Beach to make copies for the 1970 and 1971 forms, is that correct?

A Yes.

Q And did she make them for you?

A Yes.

Q What did you do with them when you received them?

A I put them in the briefcase that I had prepared to take with me.

Q And on that morning when Mr. Gill was in the office, did he have an outer coat on or not?

A Yes.

Q To your recollection, was it properly described by your secretary?

A Yes.

Q Do you remember the coat?

A Very well.

Q Did you put a coat on when you left?

A Yes.

Q And could you describe the coat that you were wearing,

the outer coat?

A It was a black raincoat-type with a zip-in liner for warmth.

Q It had a zip-in lining?

A Yes, sir.

Q Did you have on a suit jacket or a sports jacket?

A I had a suit on.

Q A suit?

A Yes.

Q Then you went with Mr. Gill to the office of the Small Business Administration in Elmira, is that correct?

A Yes.

Q And when you got there, can you tell us your recollection about what time it was?

A I believe we were pretty prompt, at eleven a.m. It could have been a little after.

Q How long after you got there did you get to Mr. Cristofaro's office?

A It was a little unusual. As soon as I mentioned my name, the receptionist jumped right up and went into Cristofaro's office, and he came out and escorted us right in.

Q When you arrived at Mr. Cristofaro's office, did he sit down or did he stand up?

A He was seated.

Q Was Mr. Gill standing, or were you seated when you went in?

A We stood.

Q And did you both stand with your coats on or with your outer coats off?

A Our coats remained on.

Q When you talked to Mr. Cristofaro, was there anybody else in the room?

A No one except Mr. Gill and myself.

Q When you stood there, could you just briefly describe the arrangement in the office of the desks and chairs and the like?

A Yes. His desk impressed me as being longer than usual. It was flush against the front of the office. The entrance-way was a small door to the left. You walk in the door, and the desk was immediately to your right. The chairs were behind the desk, which means they would be at the rear of Mr. Cristofaro, and one chair was over towards the side and could have been described as to the right rear of Mr. Cristofaro.

Q Did either of you sit at these chairs?

A No.

Q Did Mr. Gill have a box with him?

A A very large one.

Q And what did Mr. Gill do with the box that you recollect?

A As we entered the office, I told Mr. Cristofaro I would like him to meet Mr. Gill. Mr. Gill walked over to the chair in front of him and laid the box down. While he was taking --

Q After you introduced him, and Mr. Gill put the box down, what was the first thing that was said by anybody in the office?

A Mr. Cristofaro didn't even acknowledge the introduction. He just said, "Give me the tax returns."

Q And who did he say that to?

A He said that to me.

Q And what did you do?

A I unzipped my briefcase, and I laid them on the table in front of him.

Q Then what was said?

A Mr. Gill turned around, laying his box down, and shoved them over the desk towards Mr. Cristofaro, and he asked, "Are these your tax returns?"

Q Then what did Mr. Gill say?

A He said, "I believe so."

Q And then what was said?

A Mr. Cristofaro handed him a pen and said, "Sign them."

Q And then what happened?

A Mr. Cristofaro shoved them over to me and said, "Here, you prepared them You sign them."

And then he handed Mr. Gill a letter to read.

Q Did you both sign the returns?

A Yes.

Q Then you say the next thing that happened is that he handed Mr. Gill a letter to read, is that correct?

A Yes.

Q And what is the next thing that happened?

A While Mr. Gill was reading the letter, and before I signed the returns, I pointed to Mr. Gill's file that Mr. Cristofaro left on his desk, the other end of his desk away from me, and I said, "Mr. Gill can explain to you how that list of losses was compiled." Thereupon, Mr. Gill handed me the letter and proceeded -- I leaned down and took the pen and signed the tax returns and put the letter on top of them and held it in my hand and read the letter.

Q So that the letter he gave you, you put on top of the tax returns and you held them while standing reading the letter?

A Yes.

Q Then did you read the letter?

A Yes.

THE COURT: What was the letter? It must have had some significance? You remember what it was, don't you?

A I do.

THE COURT: All I want you to do is call the jury's attention to what the letter was.

Q I show you Exhibit 2, is this the letter that you had in your hand at that time?

A Yes.

Q And what happened after you read the letter?

THE COURT: The jury wants to know what the letter was about. It must have been significant.

A Yes. Exhibit D-2 --

Q Can you tell us the subject matter of the letter?

A The subject matter is simply that the application had previously been withdrawn, and they required information which we did not have with us, and a resubmission before they would even reconsider.

Q After you read this letter, what did you say?

A I put the letter and the returns right back in my briefcase.

Q And you had this letter, Exhibit D-2, in your briefcase?

A Yes.

Q And did Exhibit D-2 remain in your possession?

A Yes.

Q And then what was said?

A Mr. Gill was explaining, and Mr. Cristofaro said, "Give me the tax returns."

Q What did you say?

A I said, "These are not what you request. We will have to prepare what you want, what you are requesting."

He asked for more than tax returns, too.

Q Then what did he say?

A He said, "It is government property."

Q What did you say?

A I said, "Well, we came in with it, and we can go out with it. This is not government property."

Q And then what happened?

A Then he called Mr. Garrity.

Q And during this time, did you two remain standing?

A Yes.

Q Were your outer coats on?

A Yes.

Q And Mr. Cristofaro remained seated at the desk?

A Yes, sir.

Q And where did you stand in relationship to his desk?

A About one step in the entranceway, right at the end of his desk where I came in the first moment.

Q What happened after this other gentleman came in?

A He stood in the doorway, and I am surprised he knew my name, and he said, "Mr. Conlin, you are not going to leave with those returns."

Q What did you say to him?

A I said, "What we came in with, we can go out with."

Q And then what happened?

A Mr. Cristofaro said, "The only way you will get anything out of this file is by giving us a letter of withdrawal."

Q What did you do?

A I pulled out a yellow tablet out of my briefcase, and I had stepped aside so I was facing Mr. Garrity, so my back wouldn't be to him when he came in, and I again went back over to the edge of the desk and laid the tablet down and wrote the letter that has been placed as an exhibit here.

Q I show you Exhibit G-3A and ask if this is the paper that you wrote?

A Yes.

Q And was that written in your handwriting?

A Yes.

Q And can you just read it to the jury?

A It is dated January 18, 1974, and says, "I hereby withdraw my application."

Q And then after you made that, what did you do?

A I asked Mr. Gill to sign it.

Q And at that time did Mr. Garrity or Mr. Cristofaro talk to Mr. Gill as to whether or not he should sign it?

A Yes.

Q What did they say?

A They endeavored to urge him not to sign.

Q And did he sign it?

A Yes.

Q When he signed it, what did you do with that paper?

A After he signed it, it remained on the desk where he signed it, right on Mr. Cristofaro's desk.

Q Then what happened?

A Then I stated, "Now according to you, we can leave with the whole file."

I addressed that remark to Mr. Cristofaro.

Q Then what did you do?

A Mr. Garrity then spoke up and said, "You are not going to leave with those returns, Mr. Conlin."

Q Then what happened?

A I just tore up the returns and shoved them right back in my briefcase.

Q And did you tell the FBI man that was in here that the reason that you tore them up is they were yours --

MR. HOULIHAN: Objection, Your Honor. Let the witness tell what he said.

THE COURT: Objection is overruled.

Q Did you tell him that you brought them in and that you could take them out?

A The first time I said that to the FBI man was on the telephone, to the Assistant U. S. Attorney. They called me and talked --

THE COURT: That isn't what he is talking about.

Q Did you tell that to the FBI man?

A Yes.

Q Now the application of Mr. Gill, and a copy of which is D-1, is it not?

A Yes.

Q Can you tell me prior to going to the office of the Small Business Administration with Mr. Gill on the day you were arrested, did you go to the office of the Small Business Administration and see anybody?

A Prior to the 18th?

Q Yes.

A On January 4th, 1974, I had an appointment with Mr. Garrity. He turned it over to Mr. Qualey. He was too busy.

Q Did you talk to Mr. Qualey about Mr. Gill's application?

A Yes, sir.

Q And did Mr. Qualey write in notes on this Exhibit D-1 in his own handwriting when you talked to him?

A Yes, sir.

Q At that time did you show Mr. Qualey any income tax forms of Mr. Gill?

A Yes, I had made penciled copies that I had prepared on an estimated basis.

Q What did you do with your penciled copies?

A I took them back to Corning with me.

Q What is the man's name you were dealing with?

A Qualey.

Q Did Mr. Qualey make copies of your penciled copies?

A Yes, as he did with Page 2 on the application, which we also filled in on that day.

Q As I understand it, then, you both filled in the information on the back of the first page of D-1 together on that day?

A Yes.

Q Although this is a copy, it is not the original, is that correct?

A That's correct. It is correct.

Q You kept the original of that application?

A They had the original that I had prepared, which is this. They gave me a machine copy on January 15, 1973, the deadline for filing. This was one of the twenty-seven I ran in before the deadline. Page 2 was incomplete. On their machine they gave me this copy. Page 2 was yet to be filled in. That was filled in on Janusry 4th, 1974, with Qualey.

Q So all the information about Mr. Gill's financial information was done by both you and Mr. Qualey on this date together, January 4th, 1974?

A Yes.

Q And at that time you filled in that second page of this application, D-1, is that correct?

A Yes.

Q And at that time you let Mr. Qualey make photocopies of these 1040 forms that you had with you, is that correct?

A Yes.

Q And you then brought your office copy of those forms back with you, is that correct?

A Yes. The copies she made where he had to make pencil marks on because some of the writing was illegible, I believe the way it copied, so he asked me to make copies and bring them in the next time I came.

Q You admit, do you not, that you did rip up the copies?

A Yes, sir.

Q Were those copies the copies that you brought with you that day?

A Yes, sir.

Q Were they ever in the file of the Small Business Administration?

A Never.

MR. LEVY: Your Honor, I have a new series of questions to ask.

THE COURT: We will recess until two o'clock.

(A luncheon recess was taken at 12:30 p.m.)

Rochester, New York

Thursday, April 1, 1976

2:10 p.m.

- - -

(Trial resumed; jury present.)

W A L T E R R. C O N L I N,

the Defendant, called as a witness in his own behalf, having previously been sworn, testified further as follows:

DIRECT EXAMINATION CONTINUED

BY MR. LEVY:

Q Mr. Conlin, did there come a time that Mr. Gill came to you in regard to making application for a Small Business loan?

A Yes.

Q About when was that?

A It would be in the fall of 1972.

Q And in the course of your work for Mr. Gill, did you search your records in regard to the filing of that 1970 return and a 1971 return?

A I looked at his records, yes.

Q Were you able to find any records in your office in regard to a 1970 return?

A No, sir.

Q Do you have any explanation as to why they were not there?

A Either part of the file was missing, but I can vaguely recall a rat race to get his '70 return out, and although I had the usual type of "T" account structure, in lieu of that general ledger, to strike a trial balance, his records weren't sufficient for that, so we sat down together --

Q I'm not asking you to go through it. Just tell me why you cannot account for it not being here?

A It wasn't my usual format in preparing it.

Q In any event, you couldn't find his 1970 file, is that correct?

A That's correct.

Q Had you filed a 1971 return for him during the time of the application for the SBA loan?

A No.

Q What was the source of the information on the application, Defendant's Exhibit 1, a SBA loan, Defendant's Exhibit 1, particularly the second page that you had which was filled in on January 4th, 1974?

THE COURT: Are you talking now about the Gill application?

Q Yes, his compilation of flood losses in December of some $80,000.

What was the source of the information on the

second page as to his prior earnings and his balance sheets?

A He started me out with a beginning figure.

Q Who gave you the figures that were on that page?

A We worked them out together.

Q By "we," who do you mean?

A Mr. Gill and myself, and then it was actually completed with Mr. Qualey and myself.

Q So that the input onto that second page were three persons, Gill, you and who else?

A Mr. Qualey.

Q And that page was actually filled out, you say, on January 4th, 1971?

A No. 1974.

Q I'm sorry -- 1974.

Now that Form 1040 that you brought to the Small Business Administration office for the year 1970 and 1971, that you finally ripped up, who gave you the information to put on those two forms?

A Mr. Gill and myself worked those out together.

Q And who gave you the source of the figures as to his gross receipts?

A Mr. Gill.

Q Did you keep any of Mr. Gill's books and records for the operation of his photography business in your office?

A No, sir.

Q Did he bring those books and records with him when you discussed the preparation of those forms?

A No, sir.

Q Then how did you get that information?

A His estimate based upon his flood losses. I wanted to work a projection, inventory turnover, how many times would his inventory turn over, get a margin percentage, do an estimating job, and he estimated the initial sales figure to begin with.

Q During 1972 and 1973 you did recommend certain real estate appraisers to your clients in regard to flood loss, did you not?

A Whenever you asked that I recommend someone, I recommended.

Q One of the persons that you recommended was Mr. Brush, is that correct?

A Yes.

Q Now in your relationship with Mr. Brush, did you ever suggest to Mr. Brush the value of the property before or after the flood?

A No.

Q In his appraisals, did he supply that as his opinion?

A As his appraisal came in, and they didn't even come to me, they came to my girl. They were all his opinions.

Q So that you didn't discuss his opinion with him. The appraisals were given to you, and the first time you saw him, the figures were on, is that correct?

A Yes.

Q What about this letter that you sent to accountants in regard to IRS regulations for flood damage?

A I didn't send any letters to accountants.

Q Did you send any to real estate appraisers?

A Yes.

Q What was the purpose of sending that to real estate appraisers?

A Several of them had talked to me about it and had requested it.

Q What was the source of your information that you put in your letter?

A The official tax service, Commerce Clearing House, Xerox copies of it.

Q Did you attach copies of these tax services, do you recall?

A Yes.

Q Did you in any way suggest to them how much to value the

property, before or after?

A No.

Q What about your business volume of the number of returns you prepared? Was there a marked difference in your volume between the returns for the tax year '71 and the tax year '72?

A Yes.

Q And can you explain in your own words what the increase or decrease was?

A Almost double, '72 over '71.

Q At that time that the volume doubled, were there other tax preparers in the Corning area that went out of business?

A Yes.

Q And how many?

A Two died and one sold out.

Q Couldn't you give us the names so we have something in the record here?

A John Thomas died in '71. Morris Dobromil died in '72 or '73, and Howard Clark sold to an Elmira firm.

Q Did the affect the volume of business you had in preparing taxes?

A Yes.

Q Would you tell the jury, in layman's language, what method

you used to prepare income tax returns?

A I would always use a prior record to refer to. It saved time and also pertained to the client, specifically items that he had for the prior year. I would use a colored pencil so it would not be confused with any markings on the form from last year. A checkmark beside the item on the prior year's return indicated to retain the item; an X-mark in color by the item on the prior year's return indicated eliminate the entire item -- but a new amount, we wrote the new amount in colored pencil.

Q You used a copy of the prior year as a guide in your interview?

A Yes, sir.

Q Tell us your system of interviewing?

A A personal interview, sitting across from my desk, and everything was done in conversation, item by item. It was a complete review in front of my clients as they so instructed me. Any questions were discussed, and they gave me the final answer on what to do in each instance.

Q How long would these interviews last?

A The minimum average was three quarters of an hour, and some of them went an hour to an hour and a half, and some longer.

Q What was the procedure in they didn't get answers to a particular problem at the interview?

A We would put a red "X" beside the item if it was on the prior year return, and if we needed the new amount for the new year, we would write on my worksheet those items for which we were awaiting answers, and I would always try to put in red pen, in ink, "Due," meaning what information was due, and draw an arrow through the item in question on my worksheet.

Q And did you keep a record of your worksheet, any record of the interview?

A Yes.

Q And did you make a record in your own handwriting of the interview?

A Yes.

Q What did the girls in the office do in regard to this procedure?

A As information was telephoned in, or brought in, it was placed in a special file for incoming information. Mrs. Beach and anyone else working on the return would take that information and match it to the returns where there were any questions. If it was anything that required my review, it was brought back to me; otherwise, it was com-

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pleted. They would frequently contact the client again, too.

Q So the basis of your system was to use the prior year as a check-off list, and you went through every item of the prior year to do the present year that you were acting on, is that correct?

A Yes.

Q And you had the prior year in front of you during the interview, is that correct?

A Yes, sir.

Q So that your questions were as to whether or not the items were the same, changed or different?

A Yes, or additional.

Q Or additional?

A Yes.

Q Now in doing some thirteen hundred returns, did you make some errors?

A Yes, sir.

Q And in doing the returns, did some of your employees make some errors?

A Yes, sir.

Q In relationship to your own SBA loan -- first, what property did you own that this applied to?

A My residence at 140 Fuller Avenue in Corning, New York.

Q And was this damaged in the flood?

A Yes, sir.

Q And for how long were you unable to live in this house?

A Until October 28 of 1972.

Q So that you were unable to live in it from the time of the flood, June 23rd, through the middle of October of the same year?

A Yes, sir.

Q And where did you live in the interim?

A Until the 28th of September, '72, we camped on the front lawn of a relative.

THE COURT: What are you saying September or October?

A The 28th of September, '72, until that date, we camped on the front lawn of a relative in Montour Falls. And then for the month of October, we camped in our own driveway.

Q And by "camping," what did you live in?

A A little travel trailer.

Q How big was this travel trailer?

A Twenty-one feet long. We cooked in our driveway until February 28 of '73.

Q What was the specific damage to your house? And I'm not asking the amount of money -- I'm asking what kind of damage was this?

A The water was approximately four and a half feet on the first floor.

Q So that on the first floor above the foundation, the water went for about four and a half feet?

A Yes.

Q Then that about the cellar?

A Approximately fifty per cent of that was out, and the next day we got some telescopic steel poles to support the house.

Q When you say that your cellar was "out," what happened to the cellar as a result of the flood?

A The back completely caved in, and about fifty per cent of the rear of both sides caved in.

Q You made an application to the SBA to repair this house?

A Yes.

Q And you were granted a loan for that purpose?

A Yes.

Q And how much did they grant you as a loan?

A It was about $24,000, I believe. The application is back there. I don't have it before me.

Q Did you make the application in time for this deadline that was mentioned, January 15, '73?

A That is when I took it in.

Q You took it in on the deadline?

A Yes, sir.

Q And when you took it in on the deadline, did you have with it the last year's tax return?

A No. I took those in later.

Q So when did you take in any 1040 returns, approximately?

A I would estimate about the middle of the year of the year of 1973.

Q And where did you take them?

A To a Mr. Goodwin.

Q Was this at the office of the Small Business Administration office?

A Yes, sir.

Q And at the time that you took the forms in, did you have a talk with him?

THE COURT: What forms?

MR. LEVY: These 1040 forms.

THE COURT: For what years?

A '70 and '71.

Q Did you have a talk with him?

A Yes, sir.

Q What did you say to him, and what did he say to you?

A He said the '70 has been filed, and the '71 is estimated, that the '71 has not been filed.

Q Was the return signed when you gave this to this gentleman, the '71?

A No, sir.

Q Have you since filed a return?

A Yes, sir.

THE COURT: Filed them with the Internal Revenue Service?

A Yes, sir.

Q Is it filed in the same condition with the same figures that existed on it when you gave it to this man?

A Exactly.

Q Can you tell us why you took all this time you file that return?

A Yes. I had it completed the first time about April of 1972.

THE COURT: You are talking now about the '71?

A The '71 return, right, and I decided I'd better apply for an extension, so I had the automatic extension to June 15

of '72, and then re-applied to July 15th. The flood came in June 23rd of '72, so I applied for what was called an extenuating circumstance extension, which I did for all my flood clients, for which the '71 return had yet to be filed.

Q Did you have an understanding with your clients about doing their work before you did your own?

A Yes, sir.

Q What did you tell them when they asked about when you were going to do their work?

A It was like a sinking ship, everyone wanted everything at once. At one point I gave them a letter saying that I would do theirs before I did my own, and I said, "Please be patient."

Q And did you comply with that understanding?

A I did.

Q In regard to the various taxpayers that came in to see you, or you can call them clients, that came in to see you, and the ones mentioned in the indictment, starting with Mr. and Mrs. Charles Ryder, Count No. 1, did you keep records in regard to the interview that you had with them?

A Yes.

Q And do you have them in front of you?

A Yes.

(D-9A marked for identification.)

Q I show you D-9A for identification and ask if this is your office copy of the interview and your work papers in regard to the Ryder 1972 return?

A Yes.

Q Starting with the casualty loss, did you have a conversation with the Ryders about their casualty loss?

A Yes.

Q What did they tell you?

A In the conversation I advised them they were not limited, just the amount that they submitted for loan purposes to SBA. They said they were going to delve into that. They outlined the furniture, rugs, trunks with clothes and other items, heirlooms, antiques, and they said that would be over $5,000 more than they submitted to SBA.

Q What did you say to them when they said it would be an additional $5,000 over what they applied to SBA?

A I said, "For a figure like that, I would appreciate if you present me with your list to the best of your recollection of what you lost in the flood."

Q What did they say to you?

A That they didn't have such a list.

Q What did they then say to you?

A I urged them to draw one up. They insisted that they didn't care to. I said, "I don't feel like putting an amount down in excess of $5,000 without a list," so they said, "Use two-thirds of that, $3,300,"which would add that amount to their SBA application to $4,832.61.

Q Are you reading from your notes that you took at the time you talked to them?

A Yes. I took seventy per cent of that figure, 3,382.83.

Q Did they tell you that that was their opinion of the amount that they lost in excess of the SBA loan?

A Yes, sir.

Q And did you tell them to produce a list at a later time?

A I urged them to, and they said they would do it.

Q Did they ever give you such a list?

A No, sir.

Q What did they say to you in regard to their gasoline tax?

A They had a truck, a car and a Honda, and they gave me the amounts, 22,000, 18,000 and 7,000 miles.

Q And did you then put down a figure on their tax return from those miles?

A By referral to the IRS chart, I did.

Q What did they tell you in regard to what you call "Sales

tax, building materials"?

A That refers to the post-flood replacement, rebuilding.

Q What did they say to you?

A They gave me a specific amount of sales tax in the amount of $50, which I didn't identify. Then they said, "Plus the $1,300 of SBA money spent," so I took the seven per cent of the $1,300 post-flood replacement money spent, and it was $91, plus the $50 figure they gave me, equals $141, which I put on their return and spelled out in front of them when I did it.

Q What did they say to you in regard to child care expenses?

A They paid fifteen dollars a week and ten dollars a week for a total of twenty-five dollars.

Q When you talked to them, did you have in front of you a copy of Form 2441?

A Yes.

Q And did you fill that out in their presence?

A Yes.

Q And what did they tell you to put on Form 2441?

A Twenty-five dollars a week for January and February, and there being five weeks in March, it was $125, out of $25 a week, and $25 a week in April and May, and in four weeks that was $100. And five weeks in June would be $125.

And $10 a week in July and August, and that was $40 each for those months. $25 a week in September was a five-week month, $125. $100 in October; $100 in November; $125 in December.

THE COURT: Does it say what they gave you as a total for child care?

A I don't recall the total.

THE COURT: You can figure it out now from the figures?

A $1,180.

Q Did you fill out that form in their presence?

A Yes, sir. I told them a total.

Q And did you keep a copy of that form in your possession, in your papers?

A Yes, sir.

Q And Count No. 2, which refers to Jane Payne, did you also have a file of Jane Payne's 1971 return?

A Yes.

Q And did you use that in your interview?

A Yes.

MR. HOULIHAN: May I have the notes that you are through reading from?

MR. LEVY: What?

MR. HOULIHAN: May I have the notes that he was just reading from?

THE COURT: Wait a minute. You can get them later for cross examination.

MR. LEVY: We will turn them over to you for cross examination.

DIRECT EXAMINATION CONTINUED

BY MR. LEVY:

Q Did you keep notes as to your interview with Jane Payne?

A Yes.

Q And tell us when this interview was. Do you have a date?

A March 14, 1972, 9:30 to 10:00 p.m.

Q And who was present?

A For the '71 return on this date, March 14th, '72, just Mrs. Payne was present.

Q Was she in your office?

A Yes, sir.

Q And she sat across the desk from you?

A Yes.

Q Did you ask her questions from her '71 return?

A Yes.

Q And did you keep notes as to the various items that you asked her about?

A Yes.

Q And about how long did this interview last?

A On this occasion it was one-half hour.

Q And did you see her again in regard to this particular return?

A On the next year's return, I did, and on this one she was alone this night.

Q You are talking about the '71 return now?

A Yes.

THE COURT: Wait a minute, '72 or '71? You said on the '72 you had the '71 return in front of you?

A On March 14, 1972, I prepared the 1971 return.

Q You have in front of you your notes for the 1971 return, is that correct?

A Yes.

Q When I am asking you questions now, you are referring to your '71 return, is that right?

A Yes.

Q So that we go back in this interview, which was with Jane Payne alone for that '71 return, is that correct?

A Yes.

THE COURT: This indictment

deals with the '72 return?

MR. LEVY: Yes, Your Honor, but the facts of the '71, we feel, are important as far as the '72 return is concerned.

THE COURT: They are not important except as they were used to file the 1972 return; otherwise, it was a closed matter.

MR. LEVY: That's correct, but it shows his process, and I think it is important in this case to do it.

THE COURT: I don't see how it is important at all unless in the '73 interview regarding the 1972 return, he referred to the 1971 return.

MR. LEVY: That is correct, Your Honor, he did, and not only that, he gained knowledge in making the '71 return that he used in making the '72 return.

THE COURT: But all the knowledge was put in the 1971 return which

he had in front of him?

MR. LEVY: That's correct, Your Honor.

THE COURT: In other words, that was a culmination of the interview, which went into the actual 1971 return?

MR. LEVY: That is correct, Your Honor.

THE COURT: I don't see that it is important, how he arrived at that. The ultimate was put in the '71 return. It is the '73 interview that is important. Now you can show how he used the 1971 return in the 1973 interview regarding the 1972 return.

MR. LEVY: That is what I intend to do, Your Honor.

THE COURT: You are proceeding as if the 1971 return is attacked. It isn't. It is not the subject of the indictment at all.

MR. LEVY: No, it isn't, Your Honor.

MR. LEVY: Would you mark these for identification?

(Defendant's Exhibits 10 and 11 marked for identification.)

Q Now going to D-11, are those your worksheets on the interview for the 1972 return?

A Yes.

Q When was the interview for that return?

A March 21, 1973.

Q Who was present at that interview?

A Jane Payne on this date.

Q Did you talk to Jane Payne in addition to that interview in preparing the '72 return?

A Yes.

Q Can you recollect when, or do you have any notes as to when?

A Yes. She and her husband came in, and her husband provided me with a worksheet on his business papers, but she didn't have the balance and said she would come back later and made the appointment for March 21, 1973.

Q In regard to Jane Payne in the year 1972, did you ask her, or did she tell you whether or not she owned a specific piece of real estate in the '72 interview?

THE COURT: The '73 interview.

Q I'm sorry -- the '73 interview?

A I didn't discuss ownership in 1973.

Q Had you discussed ownership of real estate with her in the 1972 interview for the 1971 return?

A Yes.

Q I show you Exhibit D-10 for identification and ask you if they are your worksheets for the '72 interview for the year 1971?

A Yes.

Q And did you have a discussion then as to the ownership of any real estate she owned?

A Yes.

Q What did you say to her and what did she say to you?

A She presented me real estate taxes to deduct on a slip of paper. I asked her if her name was on the deed, because I know she had been living in a rental building before that.

Q What did she say when you asked her if her name was on the deed?

A She said, "Yes," that it was on the deed with her father.

Q Did you ask her whether or not anybody else's name was on the deed?

A Yes.

Q And what did she say?

A She said she had moved into her father's home where her sister was living, so I asked her if her sister's name was also on it, and she said, "No."

Q Did you treat the real estate taxes as a deduction in the '71 return?

A Yes.

Q Did you use the figure she gave you for the real estate taxes?

A Yes.

THE COURT: The 1971 return?

A Yes.

Q Now in regard to the '72 return, did she bring you a list of the real estate taxes?

A Yes.

Q Did you use the list she gave you to put on her return?

A Yes.

Q Did you have a discussion with her as to whether or not this house she lived in was damaged in the flood?

A Yes.

Q Tell us what she said to you and what you said to her in that regard?

A My notes indicate, "Flood -- cellar was filled. Three feet of water around the house. Yard a mess. Cellar needed strengthening."

Q Did you have a talk with her as to the dollar amount of this damage?

A Yes.

Q What did you say to her, and what did she say to you?

A I asked her if she had someone who would pay for it immediately before the flood and right after the flood, the very next day, how much did she feel that she would have to concede in selling price to get the person to buy.

Q What did she say to you?

A She said she would have to guess on it. I urged her to get a realtor.

Q Then what did she say?

A She said she would rather not go to that expense. And she estimated a $3,000 drop in market value, and that is what I used.

Q Did you have a talk with her in regard to her interest expense at the Lincoln First Bank?

A Yes, sir.

Q And how was this mentioned?

A It was listed from the prior year, so I asked her if

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there was any for 1972.

Q And what did she say?

A She said, "Yes," and gave me the amount.

THE COURT: How much did she give you?

A $117.18.

Q In regard to Mr. and Mrs. Payne, is their case still pending in the Tax Court?

A Yes.

Q And it hasn't been resolved?

A That is correct.

Q In regard to Count 3, Adrian N. and Edna Van Alstine, do you recollect having an interview with them?

A Yes, sir.

MR. LEVY: Would you mark this for identification?

(Defendant's Exhibit 12 marked for identification.)

Q I show you D-12 for identification and ask if these are the worksheets by which you prepared the 1972 return?

A Yes.

Q Can you tell us when they came in to see you, or did they both come in, or just one came in or what?

A May I ask a question for clarification?

Q Yes.

A I'm talking about the 1040, '71, is that correct?

THE COURT: No, '72.

Q No, and I am asking for the '72.

A Oh, that is not D-12 then.

MR. LEVY: Would you mark this for identification?

(Defendant's Exhibit 13 marked for identification.)

MR. LEVY: And this is the interview?

THE COURT: If that information is wrong about D-12, what does D-12 relate to?

MR. LEVY: To the 1971.

Is that correct?

A Yes.

THE COURT: '71 -- all right.

Q And D-13, then, refers to the '72, is that correct?

A Yes.

Q Can you tell us now when you had the interview with them for the '72 return?

A March 13, 1973, 7:10 p.m.

Q Did they both come?

A Yes.

Q And did you use their '71 return in talking to them?

A Yes.

Q Did you go through the items of their '71 return?

A Yes.

Q In regard to the '72 interview, about how long did it take?

A This took three quarters of an hour on that day.

Q Did you discuss with them their gasoline tax?

A Yes.

Q And what did they say to you and what did you say to them?

A I reviewed the 1971 in which they had three vehicles. I read the amounts. And they said, "Drop the 34,000 mile vehicle off, and you would only have two vehicles in '72. Retain the same mileage for the two vehicles remaining that we had in '71."

Q And that is what they said?

A That is what they said.

Q Did you tell them how many miles that represented?

A Yes, sir.

Q What did they say to you?

A That they would use the 27,000 for one vehicle and 18,000 for the other vehicle.

Q Did you talk to them about interest expense, installment purchases?

A It is on the installment purchase line that I always refer to it as "miscellaneous interest." We don't mean it as "installment purchase." That is a convenient line to use.

Q Did you talk to them about miscellaneous interest?

A Yes, every year.

THE COURT: We are not talking about "every year." We are talking about this year, '72.

THE WITNESS: Yes.

Q Was there an item for "miscellaneous interest" on their '71 return?

A Yes.

Q And what did you say to them in regard to that?

A I asked them how that figure would compare for the figure of 1972, if they felt they had that much more or less.

Q What did they say?

A I said, "If we are going closer to $100, you had better get a breakdown," so they gave me $98.14. I might have suggested the figure "$98.14," but they told me to use it.

Q In regard to their casualty loss, did you have a talk with them about that?

A Yes, sir.

Q What was said?

A "Water is four feet deep in the cellar. Terrific seepage. The creek needs dredging. Need to drain the land and dry out the cellar. They will never be able to sell the house as it is with four feet of water in it."

Q Did you talk to them about the extent of their loss, dollar-wise?

A Yes.

Q What did you say to them, and what did they say to you?

A I urged them to have a realty appraisal.

Q What did they say?

A They were afraid if they had a realty appraisal it would become a matter of local record, and they didn't want a realty appraisal. Then I said, "Use your own best judgment."

Q How did you arrive at the figure for this casualty loss?

A They estimated they would have to concede a $3,000 drop in the selling price if they were to sell it right after the flood -- and as to what they could get for it immediately preceding the flood.

Q Now Mr. Van Alstine brought in a note to you telling you not to put the $3,000 flood damage in the return, did he not?

A Yes, sir.

Q And do you have a copy of that note?

A This is the very note he brought in to me, sir, in the envelope.

Q Then did you have a talk with him after that note was delivered to you?

A Yes, sir.

Q And where was this talk?

A By the telephone, three or four of them. He kept calling back to discuss it.

Q And what did you say to him, and what did he say to you in regard to that note?

A My message to him was that this tax return was a confidential matter, that it was not public information, and that if he felt he had a casualty loss, it would not be published publicly. It would not affect his market value. The only thing that would affect his market value, in my opinion, was if he failed to rebuild the property and that would affect it, whether he took the loss or not. So I left that understanding with him, to just let me know what he

wants me to do.

Q Did he come to pick up the return for signing?

A Well, he called in and told me to proceed.

THE COURT: You mean to proceed with the $3,000 figure?

A Yes, sir.

Q Now these safety shoes, and they are not on the indictment, but were they mentioned in regard to the '72 return?

A Yes, sir.

Q Had there been safety shoes on the '71 return?

A Yes, sir.

Q And did you ask him about the safety shoes in the '72 interview?

A Yes, sir.

Q And what did you say to him, and what did he say to you?

A He said, "Take the same as last year, two pair, the same price."

THE COURT: The same price?

A Yes.

THE COURT: Sixty dollars for two?

A $61.44, $30.72 a pair.

Q In regard to Count No. 4, Ross, did you have an interview with the Rosses in regard to their 1972 tax return?

A Yes.

Q Did Mr. and Mrs. Ross come together, or did they come alone, or what?

A Just Mrs. Ross.

Q What was the date of the interview?

A March 16, 1973, 11:40 a.m.

Q How long was she with you?

A Three quarters of an hour.

Q Did she bring in any notes and papers?

A As memory serves me, she had something that she referred to when she talked with me.

Q Did she give you a worksheet?

A No, sir.

Q In regard to her medical expenses, did you talk to her about various doctors and how much their bills were?

A Yes, sir. I just ran through last year's list.

Q And on last year's list, was there Dr. Bresloff, Dr. Darling and Dr. Ober?

A Yes, sir.

Q What did you say to her in regard to those three doctors?

A I didn't single out these three. I just asked her the amount. She indicated that she would have to check the amount, and she would call me back. She called me back

that same day.

Q And what figures did she give you in regard to these three doctors when she called you back?

A Dr. Bresloff, $120; Dr. Darling, $25; Dr. Tichane, $27.

Q How about Dr. Ober?

A Dr. Ober, $70, medical mileage.

Q In regard to interest expense, installment purchases, did you have a discussion with her about that?

A Yes, sir.

Q What did you say to her, and what did she say to you?

A I asked her if she had any for 1972 like she had in '71.

Q And what did she say?

A She estimated an amount, $94.12.

Q Did you talk to her about any casualty loss that she had as a result of the flood?

A Yes.

Q Did she tell you whether or not she had any such loss?

A Yes, she did.

Q What did you say to her, and what did she say to you?

A She had her list on personalty, and I used seventy-five per cent of her total on realty.

THE COURT: You used what?

A Seventy-five per cent of her total.

THE COURT: Why didn't you use the whole total?

A Because she had the replacement cost, original cost, and I allowed for drop in market to be as close as to what we would say immediately before the flood, which would not be the new price, in my opinion, which she had on the list.

Q Did she have any damage to her real estate?

A Yes, she did.

Q What did she say about that?

A "Four and a half feet in the cellar."

She had a family room in the basement.

Q Did you talk about how much this would be?

A Yes. I urged a realty appraisal. She did not want one, so, again, I asked her what she would concede in price if she had a buyer.

Q What did she say?

A Five thousand dollars.

Q Did you tell her at some future time she may need a real estate appraisal?

A I make that a standard appraisal.

Q I'm not asking you what you do --

A Yes.

Q Did you talk to her about whether or not she had a SBA

loan?

A I don't find a notation on my worksheet to that, sir.

Q Is this your interview on your worksheet?

A Yes.

MR. HOULIHAN: May this be marked, please?

MR. LEVY: Mark this for identification, please?

(Defendant's Exhibit 14 marked for identification.)

Q Now the next item on the indictment has to do with Paul and Vicki Carozzoni. Did you have an interview with these people in regard to their '72 return?

A Yes, sir.

Q And did you talk to both of them, or did you talk to one of them alone?

A Both of them.

Q Where did you talk to them?

A In my office.

Q What was the date and time of the interview?

A January 26, 1973, 11:25 p.m., and again on April 6, 1973, 11:45 a.m.

Q There are three items on this indictment, one being mis-

cellaneous deduction, union fees. Did you have a talk with them, or with him, about union fees?

A Yes, sir.

Q What did they say to you, and what did you say to them in regard to union fees?

A He said he was new in the trades, and he would have to advise me. He would have to find out.

Q Did you have a talk with them about casualty loss?

A Yes.

Q Did they tell you whether or not any of their property was damaged in the flood?

A Yes.

Q What did they say to you?

A They said that the water undermined their steps, and the cellar wall bulged.

Q Did you ask him whether or not he had an estimate to fix the cellar wall?

A I don't believe so, but I urged him to get an appraisal, and he did.

Q Did you refer him to anybody to get an appraisal?

A Yes. I gave him the names of three.

Q And who did he choose?

A He chose Millard Brush. Well, whether he chose him, or he

was the only one he could get, I don't know.

Q But Millard Brush made an appraisal of the damage?

A Yes, sir.

Q And did he give you an opinion of the before value and after value of that real estate?

A Yes, sir.

Q Did you have anything to do with telling Mr. Brush the amounts to put in that appraisal?

A No.

Q Was that his own opinion?

A Yes.

Q Had you suggested to Mr. Brush the form of the appraisal so as to meet the requirements of Internal Revenue?

A Yes.

Q And how did you do that?

A Several realtors had requested it, so I took pictures of our tax service, Commerce Clearing House, Code Section 1.165-7(a)(2), illustrations and everything.

Q It had illustrations in it?

A Yes, sir.

Q And you mailed those to them?

A Yes, sir.

Q Did you attach a copy of this appraisal to their return?

A Yes, sir.

Q Do you have a copy in your file?

A Yes (indicating), and this is their original signature, incidentally.

Q And you put a copy in along with their return?

A Yes.

Q Did they tell you whether or not they had an SBA loan?

A I don't see anything on my worksheet about an SBA loan.

Q In regard to this casualty loss, what figures did you use to put in the return?

A We used $3,000.

Q What is the source of those figures?

A The drop in market value, based on Mr. Brush's appraisal.

Q What figures did you put in?

A $3,000.

Q And the actual figures in the return were $100 deducted from that, making it $2,900?

A Yes.

Q So you used the $3,000 minus the $100 deductible, and the total in the return was $2,900?

A Yes.

Q Did you tell them you were putting that in their return?

A Yes.

Q In regard to rental income from this property that was damaged, did you have any conversation with them about rents that they took in?

A No, sir.

Q Did you have any conversation with them about rental expense?

A No, sir, not for deduction. The next year they had to break it down.

Q I'm not asking you about "next year." Did they tell you about any rental expense?

A No.

Q So you neither put in rental income nor rental expense in that return, is that correct?

A Correct.

Q Did they tell you that they had moved into the property after the flood?

A Yes.

Q Did they tell you whether or not they had worked on remodeling the house before the flood?

A Yes.

Q Is their case still pending before the Tax Court?

A Yes.

THE COURT: We will take a short

recess at this time.

(Recess taken from 3:25 p.m. to 3:35 p.m.)

MR. LEVY: Would you mark this for identification?

(Defendant's Exhibit 15 marked for identification.)

Q D-15 is the Carozzoni work papers for the 1972 return, is that correct?

A Yes.

Q Now the next one is Bassney, Count 6. Do you have your file on that?

A Yes.

Q And your 1972 work papers for the 1972 tax?

A Yes.

MR. LEVY: Would you mark this for identification?

(Defendant's Exhibit 16 marked for identification.)

Q I show you D-16 for identification and ask if these are the Bassney work papers for this 1972 tax return?

A Yes.

Q I ask you, did you have an interview with these people?

A Yes, just Mr. Bassney.

Q What was the date of the interview?

A May 10, 1973.

Q In regard to the gasoline tax, did you have a talk with him?

A Yes.

Q And just quickly, what was said?

A "Two cars, 34,000 miles, 24,000 miles."

THE COURT: What were those figures?

A 34,000 miles and 24,000 miles.

Q And then did you discuss with him post-flood replacement of materials?

A Yes.

Q What did you say, and what did he say?

A He gave me three amounts, $513, $106 and $85 for a total of $704 at seven per cent sales tax, $49.28.

THE COURT: What is the amount?

A $49.28.

Q Did you enter that on his tax return?

A Yes.

Q Interest expense: Installment purchases. Did you talk about that with him?

A Yes.

Q And what was said?

A Did he have any in '72 like he did in 1971.

Q Did you have the '71 return before you?

A Yes.

Q What did he say?

A He said approximately the same, so I suggested $98.14, and he said, "Use it."

Q What about the amount on his '71 return?

A $97.82.

Q And he knew that was entered on his return?

A Yes.

Q Now you subsequently wrote a letter to Bassney concerning his audit, did you not?

A I don't recall a letter in connection with the audit, sir.

Q Did you write a letter to him where you made reference to his gasoline tax?

A Yes, I did.

Q And how did you refer to this after the event?

A It was an obvious guess. I can't recall the wording.

Q Do you recognize that that was a guess?

A Yes.

Q It was a guess by who?

A By Mr. Bassney, and it was less than the previous year.

5,000 miles less than the previous year.

Q And you recognized he was estimating this?

A Yes.

MR. LEVY: Would you mark this for identification?

(Defendant's Exhibit 17 marked for identification.)

Q I show you Defendant's Exhibit 17 for identification and ask if those are your work papers in regard to Minier in Count No. 7?

A Yes.

THE COURT: This relates to the '72 return, I take it?

A Yes.

Q And there are two items "gasoline tax and casualty loss," In regard to the gasoline tax, what did he tell you?

A "Use 2,000 more than the previous year." The previous year was 52,000, so he used 54,000.

Q And did you discuss the mileage with him?

A Yes.

Q And did you discuss how much he had used in the previous year?

A Yes.

Q Now on the casualty loss, did you have a discussion with him?

A Yes.

Q And what did he say, and what did you say?

A He submitted their list of personalty loss, of which I used seventy per cent of the value he had placed on it.

Q How much was that?

A He had a total cost of $3,144.80, and I used $2,201.36.

Q Did he have any loss to real estate?

A Yes.

Q And how was that determined?

A By a realty appraisal.

Q Who made the appraisal?

A Millard L. Brush.

Q In regard to this appraisal, did you suggest, or tell Mr. Brush to make any of the opinions of value, either before or after the flood?

A No, sir.

Q Is that his opinion, as far as you are concerned?

A As far as I know, this is his opinion.

Q What was his opinion as to the loss as a result of the flood?

A Immediately before, $25,000, immediately after, $20,500; a

$4,500 drop in market due to casualty loss damage to that property.

Q And did you use that figure on your tax return?

A Yes, sir.

Q Were you told about an SBA loan?

A I don't have a memorandum on my worksheet regarding an SBA loan.

Q And your total figure after considering those two items of personal property and real property damage as a result of the flood was how much?

A $6,601.36.

Q The next one is Lamb. Do you have work papers for Lamb for 1972?

A Yes.

MR. LEVY: Would you mark this for identification?

(Defendant's Exhibit 18 marked for identification.)

Q I show you D-18 for identification and ask if these are your work papers that you used in regard to the Lamb 1972 tax return?

A Yes.

Q And can you tell us whether you had any interview with Mrs.

Lamb?

A I had no interview with Mrs. Lamb.

Q Did you get any information via your help in the office from Mrs. Lamb?

A Yes.

Q Do you have a copy of that?

A Yes.

Q Did you have any interview with Mr. Lamb as a result in preperation for the '72 return?

A Yes. One face to face and one by telephone.

Q And can you tell us about when that interview took place?

A 12:45 p.m. April 14, 1973.

Q There has been talk here that Mr. Lamb works downstairs of your office, is that correct?

A Yes.

Q He presently is in poor health, is that right?

A Yes.

Q At the time of this return, what was the general state of health, do you know?

A Generally, good. He was up and down, but this time of the year he was all right.

Q Have you known him over the years?

A Yes.

Q Do you call him "Art"?

A Yes, sir.

Q Do you go and see him often downstairs in the pharmacy?

A Frequently.

Q And did you go through the various items with him, of his and his wife's 1971 return, in preparing the '72 return?

A Yes.

Q When you went through the '71 return with him, did you make marks on his '71 return for which to prepare the '72 return?

A Yes.

Q And did you go through the items of medical and dental expense with him?

A Yes.

Q And gasoline tax?

A Yes.

Q And interest expense, installment purchases?

A Yes.

Q Contributions?

A Yes.

Q Miscellaneous deductions for the Northside Business Club and the Northside luncheon meetings?

A Yes.

A Yes.

Q And you specifically talked to him about each of those items?

A Yes.

Q And you got answers from him in regard to that talk?

A Yes.

Q Were the figures you put in figures that were discussed at that time?

A Yes. This was just one figure. I had to wait for more information on it.

Q What figure did you have to get for more information?

A BankAmericard.

Q How did you get that?

A I got a telephone call from Art.

Q What was the information you received?

A His wife had only one dollar, and he gave me $101.

Q In regard to these figures, did you go over the medical and dental expense items together, $349?

A Yes.

Q Did you put that on the return?

A Yes.

Q And gasoline tax, how did you determine that?

A 34,022 miles, which was 2,000 less than the prior year.

Q And that you understood was an estimate?

A Yes.

Q Did he?

A Yes.

Q And the rest of the items, you discussed each one, and he gave you an amount?

A Yes.

Q And this was installment purchases?

A Yes.

Q How much?

A $92.12.

Q Marine Midland?

A Marine Midland Bank I carried over a computation from prior years. I finished it up in 1972.

Q Did you ask him whether he still had the loan?

A I don't recall that, but I figured it out right in front of him. We discussed it, and he gave me the amount that I came up with.

Q And you say his BankAmericard, that you got that $101 amount by phone from him?

A Yes. He said, "The one dollar amount is incorrect."

Q And the contributions, did you go through the list of contributions with him from the prior year?

A Yes, sir.

Q And miscellaneous deductions, did you ask him about Northside Business Club?

A Yes, sir.

Q How much did he say that was?

A The same as last year, $30.

Q And Northside lunch meetings?

A The same as last year, $73.50.

MR. LEVY: Would you mark this for identification?

(Defendant's Exhibit 19 marked for identification.)

Q Now No. 9, which is Clark, and I show you D-19 marked for identification, your worksheets in regard to the Clarks' '72 return (indicating), and as I recollect, Clark was a mailman?

A A rural letter carrier.

Q Didn't you have an interview with Mr. Clark?

A Yes.

Q And when?

A February 7, 1973, 7:00 p.m.

Q How long did that interview last?

A An hour and a half.

Q And was his wife present?

A No.

Q Had his wife sent along a list of items?

A Yes.

Q In going over these items with Mr. Clark, did you go through his 1971 return with him?

A Yes.

Q And in going through that return, did you make checkmarks after the various items?

A Yes.

Q Did you go through his medical and dental expense with him?

A Yes.

Q And did Mr. Clark have to get any further information for you in regard to the list of doctors?

A Yes.

Q And what did he get for you?

A He used my telephone then and there.

Q And who did he call?

A I don't know. I presume it was his wife.

Q Did he then provide you with a list of doctor bills?

A He called off the amount, and I called off the name, and he repeated the name and called off the amount, and I recorded it.

Q Did these total $418.90?

A (No response.)

Q Did they as far as medical, dental expenses, doctors and drugs?

A We claimed $461.62 on the return. I had to do some adding.

Q Tell me how you arrived at your figure?

A Orthopedic shoes, $34.95; Dr. Kess, pediatrician, $18; Dr. Cohen, $24; Corning Medical & Surgical, $95.75; Dr. Lecuona, $18; Dr. Hoffman, $48.

Q What was the total of all of your medical and dental expenses?

A $461.62.

Q Is that what you put on the return?

A Yes. It is right on the return.

Q Now did you figure that out in his presence?

A No, I did not. The interview was turned over, and it was finished up by Mrs. Beach.

Q So that the totals were made by Mrs. Beach?

A Yes.

Q Now in regard to the interest, installment purchases, did you talk to him about that from his return?

A Yes, sir.

Q His '71 return?

A Yes, sir.

Q What was said about installment purchases?

A Approximately the same.

Q And what had it been in 1971?

A $94.82.

Q And what estimate did you make?

A $92.14.

Q And did he know that figure as being put down?

A Yes, sir.

Q How about the Chemung Canal Trust? Was that discussed?

A Yes, $72.40.

Q Under "Miscellaneous Deductions," did you discuss dues and fees with him?

A Yes.

Q What was said?

A His wife paid R.N. dues in '72 just like she did in '71.

Q How much was that?

A $28.

Q Did you ask him the amount for tax preparation?

A Yes.

Q What did he say?

A He gave me two years. Apparently, he paid both years in

one year, $43 and $71.

Q Did you discuss with him a flashing car light?

A Yes.

Q And what was said in regard to the flashing car light?

A He gave me the amount of $28.

Q What was said?

A He had one the previous year, and he had to replace it.

Q How much was the one for the previous year?

A $25.

MR. LEVY: Would you mark this for identification?

(Defendant's Exhibit 20 marked for identification.)

Q I show you D-20 for identification and ask you if those are your worksheets for the preparation of Madden's '72 return?

A Yes.

Q Did Mr. Madden come in to see you?

A Yes.

Q On what day?

A February 6, 1973.

Q What time?

A Four p.m.

Q About how long did you spend with him?

A An hour and a half.

Q And there are two items in this indictment in regard to Madden, and one is the medical and dental expense, and the other is the clothing. Did you discuss the medical and dental expense with him?

A Yes.

Q And as a result of it, did he give you any information in regard to that expense?

A I asked him a question.

Q What did he say?

What was the question, and what did he say?

A He used $150 last year. I asked, "Do you still pay over $300?"

And he answered, "Yes." And he said --

THE COURT: Did you make his '71 return?

A Yes.

Q And you had that in front of you at the interview?

A Yes.

Q One hundred and fifty had been used on his '71 return?

A Yes.

Q In regard to the clothing, did you have a conversation with

him in regard to the clothing?

A Yes.

Q Did he bring it up, or did you bring it up?

A He brought it up.

Q What did he say?

A He brought up the subject about clothing for business expense, saying that he knew of others who were claiming it. I indicated that clothing that could be for normal street wear were not, to my understanding, a deductible business expense. And he insisted that he knew of high officials in his firm and those of whom he called that were taking the deduction, and then we got into a discussion as to the primary purpose of those clothes and the out-of-the-ordinary number he had to buy, which would be necessitated for business reasons. We concluded the conversation with the understanding that he would probably be called for an audit, and that he must have all the substantiation, and that there was no object in taking the deduction unless he was prepared to go to an appellate interpretation.

Q And you told him that there was a good likelihood if he put this in his return this would be picked up by the IRS and audited, is that correct?

A Yes.

Q You also told him that if it was picked up that it would require an interpretation in Tax Court?

A Yes, to the Appellate Division of IRS.

Q Did he understand that when he gave you the figures?

A Yes.

Q Did you determine the amounts of clothing that he used for his purposes of presentation?

A No.

Q Did you get a list of clothing?

A He called off an item, like shirts -- he and his wife discussed it, thirty-six shirts, and on my worksheet I wrote down, "Shirts," thirty-six times the price he said, and he came up with the amount we have on the return.

THE COURT: What is the amount?

A We have $338 on the return for thirty-six shirts.

Q Then what was the next item?

A The next item were four heavy winter suits, $528.

Q What was the next item?

A Three light-weight summer suits, $322.

Q And the next item?

A Three pairs of shoes, $81.

Q And the next item?

A Twenty pairs of socks, $22.80.

Q And the next item?

A Six sets of links, $148.80.

Q And the next item?

A Three tie tacs, $14.40.

Q Is that the total list?

A Forty-two ties, $292.32.

The other items aren't clothing, but he gave them to me.

Q What other items did he give you?

A Suitcase, $50.20; business dues, $35; business subscriptions, $57.40.

Q Was his wife present when he gave you that list?

A Yes, she was.

Q Did you suggest any of those amounts of money?

A No.

Q Did he bring up each of those items himself?

A He did.

Q And did he give you those values himself?

A Yes.

MR. LEVY: Would you mark this for identification?

(Defendant's Exhibit 21 marked for identification.)

Q The next is Warner, Count No. 11, and I show you D-21 for identification and ask you if this is Warner's worksheets for his 1972 tax return?

A Yes.

Q The Warners were the people that had the mobile home?

A Yes.

Q And did you have a talk with them as to whether or not they owned a mobile home in 1972?

A Yes.

Q And had you done their tax return before?

A No.

Q Were they both in to see you, or just one?

A Just Mr. Warner.

Q And when did he come into see you?

THE COURT: Did you have a copy of his 1971 return? You didn't make it, but did you have a copy of it?

A No, sir.

Q When did he come in to see you?

A March 21, 1973.

Q Do you have a time?

A Fight p.m.

Q About how long did you talk to him?

A an hour and a quarter.

Q And did you go over all the normal items of the tax return with him?

A Yes.

Q What did he say in regard to a mobile home?

A That it was in the flood.

Q Did he say whether or not he owned a mobile home?

A Yes.

Q Did he give you his payments that he had to make, installment payments, for that mobile home?

A Yes.

Q And how much did he tell you?

A He had sixty payments to make at $71.73, equaling $4,303.80, and he was paying twelve per cent interest on that in 1972.

Q And did you put down an interest expense for that loan?

A Yes.

Q How much did you put down?

A $516.46.

Q And is that the mathematics after discussing the loan with you?

A Yes.

Q Did you talk to him about any casualty loss in regard to that mobile home?

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A Yes.

Q What was said?

A That he had some reason for knowing that the market value immediately before was $4,700. I don't recall now why, whether he was planning on trading it or selling it, and he couldn't have sold it for a plug nickel right after the flood.

THE COURT: What was the figure he gave you?

A $4,700 market value immediately preceding, and he received $2,700 insurance, leaving a $2,000 unreimbursed drop in market value.

Q Did he tell you whether he had an SBA loan?

A I find no memorandum of an SBA loan on my worksheet.

Q In regard to dental and medical expenses, did you talk to him about whether or not he had any such expenses?

A Yes, sir.

Q And what did he say?

A He gave me three monthly payments in the amount of $24, $13 and $6.50, which included major medical insurance.

Q How much did that total?

A It is over three hundred a year, so I just took $150.

Q With regard to gasoline tax, did you talk to him about

that?

A Yes, sir.

Q And what did he say?

A One car, 34,000 miles.

Q How did you get the amount of $197 put on the tax return?

A By using the IRS chart.

Q In regard to "Taxes: Real estate," did you talk to him about that?

A Yes.

Q And what did he say?

A That he estimated the levy of taxes on his mobile home for approximately $12 of his monthly payment.

THE COURT: What kind of tax?

A Real tax, town and county and school.

THE COURT: Do you mean they assessed his mobile home as real estate?

A Yes. They do that in all mobile home parks.

Q After talking to him, did you discuss the total of that $144 with him?

A Yes.

Q Is that what you put on the tax return?

A Yes.

THE COURT: What was the figure?

MR. LEVY: $144, Your Honor.

Now the last one is Wenderlich, Your Honor.

Would you mark this for identification?

(Defendant's Exhibit 22 marked for identification.)

Q I show you D-22, and I ask if these are your worksheets in regard to Richardean Wenderlich's 1972 tax return?

A Yes, they are.

Q When did Mrs. Wenderlich first come into your office?

A February 17, 1972, 9:35 a.m., three hours.

Q And that is the first time she came in?

A Yes.

Q Who did she come in with?

A Mr. Stewart Breitwise.

Q And what did you discuss at that time?

A Mr. Breitwise wanted me to set up a set of books that he could use in connection for keeping records of Mrs. Wenderlich's florist business.

Q Did you help set up a set of books?

A Yes.

Q During that conversation, at any time did you tell Mrs.

Wenderlich, or did Mr. Breitwise tell Mrs. Wenderlich, that you could save her a lot of money in taxes?

A Never, to my knowledge, sir.

Q Did you ever tell her that?

A I never told her that.

Q Did there come a time that she came in, in regard to her '72 taxes?

A Yes.

Q And when was that?

A June 22, 1973.

Q And was she then on an extension?

A Yes, until August 15, 1973.

Q Did Mrs. Wenderlich, when she came to you, either the first time with Mr. Breitwise, or she came herself to prepare the '72 return, did she give you any prior tax returns?

A No.

Q Did she give you a depreciation schedule of personal property that she had used in prior tax returns?

A She gave me a schedule, a single sheet of paper, which she took back with her.

Q And did you use that schedule in preparing her 1972 return?

A Yes.

Q When did you have your interview with her in regard to the '72 return?

A June 22, 1973.

Q Do you have a time on that?

A 1:50 p.m. until 5:10 p.m.

Q Until what time?

A 5:10 p.m.

Q So you talked to her for how many hours that time?

A Three and one-quarter hours.

Q And in it, did you discuss the various problems in regard to her 1972 return?

A Yes.

Q In that period of time, did she give you the books, or did she give you a summary of the books, or what?

A She gave me the figures, I believe, verbally.

THE COURT: Did she have books with her?

A She had a summary with her.

THE COURT: Did she have the books with her?

A No.

Q And did you make up what you call a "T" account for her operation for the year 1972?

A Yes.

Q Do you have that in front of you?

A Yes.

Q Was that made in preparation of the '72 return?

A Yes.

Q And what is a "T" account?

A A "T" account for a small business is in lieu of a general ledger and what would be a general ledger page, we merely draw a "T" debit-credit, and label what it would be, just like a page in a general ledger. There are a series of them on a spread sheet, and we call them a "T" account.

Q What items did you put down in that "T" account?

A Items that she gave to me at that time.

Q What headings are they under?

A Cash in Bank; Cash on Hand; Expenses; Purchases; Sales; Withdrawels; Accrued Payroll; Fixed Assets. And then there are some memorandums here in connection with payroll and the payroll taxes.

Q In discussing the casualty loss, what did she say to you, and what did you say to her?

A She had a casualty loss -- she stated that she had a drop, that the Assessor had advised her that she would have, and she wanted me to use the figure of a $9,500 drop in value

on her personal realty.

THE COURT: $9,500?

A $9,500. I urged her to have a realtor. She didn't want the expense.

Q Did you go over any of the items that had been damaged?

A We went into the business items that had been damaged, that were on her depreciation schedule.

Q Did you go through this depreciation schedule to ask her what had been damaged?

A Yes.

Q Did you go through it item by item?

A Item by item.

Q Did you read off the item and ask her if it had been damaged?

A Yes.

Q Then she would give you an answer?

A Yes.

Q As a result of that, did you change the depreciation schedule?

A Yes.

Q What did you do in changing it?

A I wrote off the balance that had not been depreciated on the items she said were of no value after the flood.

Q Did there come a time that Mrs. Wenderlich was audited for her '72 return?

A Yes.

Q And at that time did she contact you, or did you contact her?

A She mailed me the letter that she received in the mail from the IRS auditor.

Q What date was that?

A August 2, 1974.

Q Did you then discuss this matter with her?

A Yes.

Q Where?

A In my office.

Q And when?

A Within a day or two after I received the letter.

Q In that discussion, did you go over her items of damage to her real estate?

A Not at that discussion.

Q At a subsequent time, did you discuss the damage to her real estate in preparation for her audit?

A Yes.

Q When was that?

A August 12, 1974.

Q And that was prior to the time the audit began?

A Yes.

Q And did you go through items of damage to her real estate?

A Yes.

Q And did she then give you a list of what she said was damaged?

A Yes.

Q Did you write down that list?

A Yes.

Q And can you read that list to us?

A May I read the summary of those --

Q No. Read the list the way you got it and wrote it down, and not the summary.

A (Reading): "For proof of casualty loss: water in cellar, five feet.

"Heating plant: hot water heater destroyed.

"Get a realtor.

"Spent $3,000 for furniture."

I am picking these just off the casualty loss items.

Q Right.

A "Loss of car."

Then it says, "Basement, five inches."

THE COURT: You said "loss of car"?

A Yes.

THE COURT: In what amount?

A I was just making notes on our conversation. Those things had to be determined. I was just trying to get the whole list of items.

THE COURT: What kind of a car was it?

A There was no mention of it.

THE COURT: When she said, "loss of car," did you ask her what kind of a car it was?

A At this point, no.

THE COURT: So you don't know the loss, and you don't know the kind of car she claims she lost?

A On the tax return, we have a car loss.

THE COURT: I'm not talking about the tax return. I'm talking about the time you talked about it.

A At the time I'm talking to her, that is correct.

Q What other items did she mention?

A "Foundation damage: Residence only.

"Cement blocks cracked and cement floor heaved and

cracked.

"Loss of freezer, a washer and dryer.

"Furnace -- furnace circulating pump. Had to replace it. Rest of furnace had to be cleaned out. Forced hot water with gas heat. Furnace is okay and electric controls not touched. Furnace wasn't too bad. Had to put in new hot water heater. Controls and everything went on that.

"Purchased a new heater and her son put it in. The plumber did all the balance of the plumbing and furnace work.

"Well water pump went. Did not replace. Normally have two wells. Lost one and now using only one. If twenty-four hours go by without water, we lose plant. A small water tank shed appears to be okay.

"Water pipes in ceiling are okay. Tapped other system into front system so as to circulate water throughout. Five family members worked about three days to clean up. Water into the first floor about a foot to six inches.

"The electric system not touched but was off in the area.

"She picked up everything from the floor in anticipation. Moved out to Coopers Plains.

"New truck caught in flood."

I showed the '69 truck lost in flood in the depreciation schedule. I only showed this July, '72, truck purchased. And I've got the amount, investment credit, purchased April, '72. These are notes that I have got here.

"Check on casualty loss.

"Recapture on investment credit.

"Truck purchased in April and lost in June flood.

"Received new truck through insurance company to replace the one lost in the flood.

"No SBA loan.

"Hours spent cleaning in greenhouse, five people, eleven days estimated.

"Crop loss written off in cost of sales so no special treatment required.

"Half-grown and finished grown crops, seeds and bulbs."

She said here that although they would be written off in cost of sales that just their presence would devaluate the property with all that dead "gunk" they had to scrape out.

"Land eroded and washed away. The front yard and the garden were to be resurfaced.

"Assessor's papers have been lost.

"The Comet should have been four fifths of the whole."

I made a note on that.

She said here, "In August of '69, the Ford wagon was traded in."

And in April of '72, is the first I knew about it.

She had to replace carpeting ruined by use following the flood. It cost her $1,000. We only used an estimated market value of two hundred on that.

I suggested realtor Althea Roll make an appraisal in addition to the Brush appraisal for this audit, because she knew Althea Roll.

Q Did Mr. Brush make an appraisal?

A Yes.

Q What was his opinion of the value before and the value after of her real estate?

A He made the appraisal for this audit, and I don't have it here.

THE COURT: When did Brush make the appraisal?

A After August 12th, '74, for this audit.

THE COURT: For the audit?

A Yes. I don't have it. I can give it to you by memory.

MR. LEVY: We have it. It is in evidence.

Q I show you Government's Exhibit 66. Is that the appraisal that Mr. Brush made in preparation of the audit?

A Yes.

Q And what does that show as the market value before and the market value after?

A $48,000 immediately preceding the flood and $36,000 immediately following the flood.

Q For a damage of $12,000?

A Yes, sir.

Q Did you suggest or advise any figure to Mr. Brush when he made this appraisal?

A No, sir.

Q Did you?

A It wasn't even typed in my office.

Q Did you have anything to do with his opinion as to the value, either before or after?

A No, sir.

Q In regard to Mrs. Wenderlich's 1973 returns, do you have your worksheets for that?

A Yes, sir.

MR. LEVY: Would you mark this for identification?

(Defendant's Exhibit 23 marked for identification.)

Q Is D-23 for identification your worksheets in the preparation of Mrs. Wenderlich's 1973 tax return?

A Yes.

Q Did you have an interview with Mrs. Wenderlich in preparation of her '73 returns?

A Yes.

Q And when was that interview?

A Sunday, April 21, 1974, 9:30 a.m. to 12:30 p.m.

Q So you spent three hours with her that day in preparation of her tax return?

A Yes.

Q And did she bring in her books and records that day?

A Yes.

Q And she actually had her books of account that day?

A Yes.

Q And did she show you her books of account that day?

A Yes.

Q Did you make some marks on her books of account?

A Yes.

Q And in addition, did you take figures in which to prepare what you call a "T" account?

A Yes.

Q Did you prepare such a "T" account?

A Yes.

MR. LEVY: Would you mark this for identification?

(Defendant's Exhibit 24 marked for identification.)

Q I show you D-24 for identification and ask if that is in your handwriting?

A Yes, it is.

Q Tell us the general categories that you considered in that "T" account for her 1973 return?

A "Cash on Hand; Cash in Bank; No information. Expenses, Purchases, Sales, Withdrawals, Fixed Assets. Additional money put into them. Accounts Receivable, Accounts Payable, Accrued Payroll Expenses, Loans and then the Trial Balance.

Q At that conference, did you talk about changing over from that cash basis to accrued basis?

A Yes.

Q And what did you say in regard to it, and what did she say?

A That was the initial intent that we were opening up the new set of books for an accrual basis. I tried to make an

issue of it at this time to make a decision. She indicated she would prefer to stay on the cash basis, and she thought it would be cheaper.

Q Did you attempt to go through the two methods to compare one with the other?

A Yes.

Q And did you have enough figures there at that time to make that determination?

A No.

Q And what was missing?

A To determine whether we would be including and receive in accounts monies that had previously been included as charge sales from the preceding year.

Q So she would have to go through her books to determine that amount that already would have accrued, is that right?

A Yes.

Q Did she say she would do that?

A Yes.

Q Did she ever do it?

A No.

Q You saw her books and records?

A Yes, sir.

Q Under the heading "Cash Sales," how much did her books

and records show?

A On "Cash Sales," the books I saw the other night, $24,986.50.

Q When you made your "T" account, how much did you put down for cash sales?

A $14,986.50.

Q Can you explain any reason why there is a $10,000 exact difference between the two?

A No, sir, other than just a mistake of some kind.

Q And that the same numbers except for the first number is changed "1" to "2", is that correct?

A That is correct.

Q In your "T" account, you have fourteen thousand, and the books and records show twenty-four thousand?

A Yes.

Q And the rest of the figures are the same to the cent, is it not?

A Yes.

Q And you attribute that to an error?

A Yes.

Q And it is your error?

A It is my writing. The books are different, so I will say it is my error.

Q Did this error partially explain the difference in the

Schedule C for gross receipts of sales?

A Yes.

Q And what did you put in the tax return for "Gross Receipts of Sales"?

A I added an additional $3,787.50 to the figure I had in order to have the income equal the outgo, and I ended up with $45,768.46.

Q And had you not made the mistake, the figure would have been higher, is that correct?

A Yes, but not by ten thousand.

Q In regard to interest income, in the return there is $880.15, is that correct?

A Yes.

Q How much did Mrs. Wenderlich tell you she had for interest income for the year 1973?

A At this meeting?

Q Yes.

A $880.15.

Q And was there some way that she determined that?

A With the statements from the interest-paying institutions like banks and things.

Q Were they added up while she was there?

A Yes. I recorded them, item by item, and added them myself.

Q And you made a list of them there?

A Yes.

Q And they are on your worksheets?

A Yes.

Q And they add up to $880.15?

A Yes.

Q And was this done while she was in your presence?

A Yes.

Q Did you go over this return with her before she signed it?

A Absolutely.

Q So she knew how much you were putting in this return for the various items?

A Yes.

Q When did you go over it with her?

A April 20th, 1974.

Q Do you have a time that you saw her?

A I beg your pardon. It was April 22, 1974. That would be the next day.

Q And did you go over it with her to discuss the various items in it?

A Yes.

Q And did you go over the items of cash receipts?

A We went over Schedule C. We didn't refer again to the

books. We went over my "T" account structure worksheets.

Q As a result of this conference, did she know what was in her tax return that she signed?

A Yes.

THE COURT: We will interrupt now. It is a quarter to five. We will adjourn until tomorrow morning at ten o'clock.

MR. HOULIHAN: Your Honor, may I have permission to examine Exhibits D-10 through D-23 tonight so we won't waste time tomorrow?

THE COURT: Yes.

MR. LEVY: I'm going to the Appellate Division, and I will be back here no later than a quarter to eleven. I am the first one on.

THE COURT: In view of that, we will recess until eleven o'clock tomorrow morning because Mr. Levy has an appointment in the Appellate Division.

(At 4:45 p.m., an adjournment was taken to Friday, April 2, 1976.)

* * * * * *

Rochester, New York
Friday, April 2, 1976
11:10 A.M.

- - -

(Trial resumed; jury present.)

W A L T E R R. C O N L I N,

the Defendant, called as a witness in his own behalf, having previously been sworn, testified further as follows:

DIRECT EXAMINATION CONTINUED

BY MR. LEVY:

Q Mr. Conlin, in your conversation with Mrs. Wenderlich over the phone concerning her extension for the 1973 tax, did you have a discussion with her concerning her depreciation schedule?

A Yes.

Q And did you make notes in regard to that conversation?

A Yes.

Q I show you Defendant's Exhibit 8 and ask if your notes are contained on that document?

A Yes.

Q What did you say to Mrs. Wenderlich, and what did she say to you in regard to the depreciation schedule?

A I emphasized that she could not count on a reduction of

the income tax -- that she should not count on a loss carry-over that had not been claimed as yet.

Q Did you tell her why?

A Because --

Q First, "yes" or "no"? Did you tell her why?

A Yes.

Q What did you tell her?

A Because I was not satisfied with the information as it appeared, and the information I had gotten from her since.

Q Did you tell her that she would have to do something in regard to this depreciation list?

A Yes. I told her that with the information I had we should reconstruct the 1973 depreciation schedule and go back and amend 1972.

Q In your talk with Mrs. Wenderlich concerning the preparation for the audit that you have stated you had some notes on, could you go back and look at your notes and refresh your recollection on that?

A Yes, I have it here.

Q Was there any discussion between you and Mrs. Wenderlich in regard to the reduction of the assessment on her property because of the flood damage? Well, first, was there any such discussion?

A Yes.

Q And what was discussed? What was said?

A I have two notes.

THE COURT: Never mind what the notes are.

Q What was said?

A Twenty-six per cent reduction --

THE COURT: Give us what you remember about it from the notes.

A She indicated that the Town Assessors had expressed an opinion in writing that it had dropped twenty-six per cent in their estimation.

Q And she told you that the assessment on her real estate had been reduced twenty-six per cent?

A Yes.

Q And that was during your discussion about the damage to her property?

A Yes.

Q Now there has been testimony here that you are a Public Accountant. Can you tell us what a Public Accountant is?

A It is one who is granted a license to practice when the law was enacted, and we are what they call "grandfathered-in," because we were already practicing.

Q So anybody who was an accountant for the certain requirements on that day automatically became a Public Accountant, is that correct?

A Yes.

Q And you were within that group?

A Yes.

Q Now have new licenses since then been granted to Public Accountants?

A No.

Q So that you didn't take any test for it? You had just been an accountant for the required number of years or time, is that correct?

A Yes.

Q Do you have to have any special license to be a tax preparer?

A No.

Q And these Counts in this indictment relate to you as a tax preparer, is that correct?

A Yes.

Q Did you ever have a Treasury card?

A No.

Q And was the right of limited practice withdrawn by the Treasury Department, as far as you are concerned?

A Yes.

Q When was that?

A I recall it was sometime in 1965.

Q And what reason was given?

A For filing my personal returns late.

Q And had you filed your personal returns late?

A Yes.

Q Had there been complaints to you and about you about filing clients' returns late?

A Yes.

Q Do you have any explanation for that?

A Just too much to do to get around to my own on time, the press of business.

Q Is that your reason for filing some of your clients' papers late?

A Yes.

Q In regard to Mr. Minier's status of his tax return for 1972, is that matter presently in Tax Court?

A Yes.

Q So that, along with the others that you mentioned, is presently in Tax Court?

A Yes.

Q And the items mentioned in the indictment are presently

being reviewed by the Tax Court?

A Yes.

Q Now over the evening, did I ask you to refresh your recollection as to your testimony concerning the interviews with Jane Payne?

A Yes.

Q And may you have made a mistake in telling the jury about who was present at Jane Payne's interviews for 1971 and 1972?

A Yes.

Q What is the situation in regard to 1971? Was somebody with her in the interview of 1971?

A Her husband was with her.

Q And did she return after that to see you?

A Yes.

Q Did she return with her husband?

A No.

Q This was before the return was finished?

A The very next day, yes.

Q Now on 1972, during the interview, did she come alone?

MR. HOULIHAN: Objection, Your Honor. It is leading.

THE COURT: I will sustain the

objection.

Q In 1972, tell us who you interviewed?

THE COURT: I think you mean the interview in '73 for the 1972 return.

MR. LEVY: That's correct.

THE WITNESS: Her husband accompanied her, left his worksheet with me, went out, and she was alone with me, and she then came back again the next day with more information.

Q So for the '71 return, which you did in early '72, she came in with her husband and returned the next day alone?

A Yes.

Q Then for the '72 return, which you did in early '73, she came with her husband, and her husband left after a short time, did you say?

A Yes.

Q Then she returned alone the next day?

A Yes.

MR. LEVY: Just one minute, Your Honor.

(Pause in the proceedings.)

MR. LEVY: I have no further

questions, Your Honor.

I would at this time offer in evidence Exhibits D-9 through D-24 in evidence.

MR. HOULIHAN: I have no objection.

THE COURT: They are received.

(Defendant's Exhibits 9 through 24 marked in evidence.)

CROSS EXAMINATION

BY MR. HOULIHAN:

Q Mr. Conlin, you began working as an accountant in 1952, is that correct?

A Approximately.

Q And that was for a firm in Syracuse, was it not?

A No, sir.

Q Did you do accounting work for anybody in Syracuse?

A What type of accounting?

THE COURT: Any kind.

A I was in industrial accounting.

Q That is accounting work, is it not?

A Yes.

Q That was in 1952 in Syracuse?

A No. I left Syracuse and came to Corning in '51.

Q So it was 1950?

A It was about 1940-41.

Q It was 1940 and '41?

A Yes.

Q This was following your Service, and I believe you said you taught at the Armed Forces Institute at Michigan?

A No.

Q Or you received education there?

A I was a student.

Q And you received your education in accounting there, is that correct?

A I took an accounting course in the United States Armed Forces Institute, and the University of Michigan was the educational institution that was supplying the course.

Q You also worked as an accountant at Leip-Rollway Corporation?

A Yes.

Q That was in 1951, was it not?

A I left there in 1951 and came to Corning.

Q Then you were a general manager of Cleveland Motors?

A Yes.

Q And you did their books at Cleveland Motors, didn't you?

A That was part of my responsibility.

Q Then you started your own business?

A During 1952, yes.

Q And that is Southern Tier Accounting and Tax Service Bureau?

A Yes.

Q And you have been in that business ever since?

A That and the public accounting aspect of it.

Q And your training isn't limited to those particular work experiences -- you have also been to many tax conferences, have you not?

A Yes.

Q And these are tax conferences sponsored by the Internal Revenue Service?

A No.

Q "No," you have never been to one sponsored by the Internal Revenue Service?

A You said "many." I have been to one.

Q Just one?

A Yes.

Q When was that one?

A It was in Rochester here. It was held in the Americana, and I believe it was possibly 1970 or 1971.

Q 1970 or 1971?

A Something like that.

Q And at that time they went over all of the changes in the tax law and interpretation of sections, and all the tax preparers who attended could ask questions and get interpretations, isn't that correct?

A I think we went over specified sections that we met to discuss.

Q I beg your pardon?

A We went over special areas that had been pre-announced was the purpose for the conference.

Q That was the first one in 1971, is that right?

A I don't ever remember attending another one sponsored by Internal Revenue Service.

Q Have you attended any since?

A No.

MR. HOULIHAN: Would you mark this for identification?

(Government's Exhibit 73 marked for identification.)

Q Have you gone to any other kind of training sessions?

Doesn't the New York State Public Accountants Association, or something to that effect --

A I attended several of their seminars.

Q You attended numerous of those, haven't you?

A I attended one of their seminars. I attended our Rochester Chapter --

THE COURT: All he wants to know is if you attended more than one of the New York State seminars?

A No.

Q How many have you attended at the Rochester Chapter?

A About three.

Q What was the Rochester Chapter? Chapter of what?

A The Empire State Association of Public Accountants.

THE COURT: I want to be sure that is what he means.

MR. HOULIHAN: That is what I mean.

THE WITNESS: About three.

Q About three?

A They are actually not educational seminars but various topics are pointed out.

Q But what?

A Various topics are pointed out.

Q Don't they make technical explanations of the sections

and such?

A No.

Q They don't?

A No. They bring out points of changes that we should pursue to be aware of.

Q They don't give technical explanations to the effect that the Internal Revenue Service --

THE COURT: Well, if he didn't attend them --

Q I believe you said you did attend them, didn't you, Mr. Conlin?

A On the Rochester Chapter, they were not technical sections of an instructional nature.

Q And how many of these did you attend?

A Three.

Q Three?

A Yes.

Q Who is Joseph Hoffman?

A He is the District Director's representative in charge of the Rochester Office.

Q I show you G-73 marked for identification. Is that a letter on your letterhead dated December 4, 1973, to Mr. Joseph Hoffman?

A It is.

Q Does that refresh your recollection as to the benefits that you have received from those programs?

THE COURT: From what programs?

MR. HOULIHAN: Sponsored by the Rochester Chapter, E.S.A.P.A.

THE WITNESS: Yes. I expressed my appreciation in this letter to Mr. Hoffman for their courtesy, as we were requested by our Association President to do, for the courtesy of the IRS officials coming there --

THE COURT: We don't want to know about the courtesies.

THE WITNESS: There was nothing educational about it.

Q Doesn't it, in fact, say, "The technical explanations by Lew Roberson and Eugene Baritol --"?

A Yes.

Q Doesn't it also say, "We have always benefitted from your programs"?

A Yes.

Q I show you another letter dated November 21st, 1974, on

your letterhead to Mr. Hoffman?

A Yes.

Q Doesn't it say in this letter, "I remember way back when you and Pat Krackel --

THE COURT: You don't have to ask him what it says in there. Offer what it says in there if you want to get it in evidence.

MR. HOULIHAN: Would you mark this for identification?

(Government's Exhibit 74 marked for identification.)

MR. HOULIHAN: I will offer G-73 and G-74 in evidence

MR. LEVY: I [illegible] no objection.

THE COURT: They are received.

(Government's Exhibits 73 and 74 marked in evidence.)

Q In addition to the attendance at seminars, it is a fact, is it not, that you have available to you all sorts of tax materials in your office?

A I have a Standard Official Services Tax in my office.

Q In fact, your walls are lined with those Services, isn't

that correct?

A Many years of those books have accumulated.

Q So you are very familiar with the Internal Revenue Service laws, then?

A No.

Q You are not?

A Just the areas I try to work with.

Q It is a fact, is it not, Mr. Conlin, in 1965, when your privilege of limited practice before the Internal Revenue Service was withdrawn by the District Director that not only was it because of failure to file timely returns but that you filed to file several returns and also, that in audit sessions, you submitted false documents in support of claims?

A Never.

THE COURT: Is there a ruling on it?

MR. LEVY: No, Your Honor.

THE COURT: I would certainly believe that if it was withdrawn, there must have been a ruling and the basis of the ruling, and it must have been in writing.

Q Was there a ruling on that?

THE COURT: You ought to know.

MR. HOULIHAN: I have only a letter.

THE WITNESS: The letter I received because I admitted to filing my returns late. I was classified as dilatory in my practice; and, therefore, my privilege of limited representation before the Internal Revenue Service was withdrawn.

THE COURT: I am very much surprised where there can be a ruling without a written basis for the ruling. When you revoke something, you don't do it on vague reason. You do it on specific reason. You do it in writing, and that is my experience.

Q And you received a letter to that effect, isn't that right?

THE COURT: The ruling may be in the letter even.

MR. HOULIHAN: Would you mark this for identification?

(Government's Exhibit 75 marked for identification.)

Q Mr. Conlin, I show you G-75. Is that a copy of the letter you received?

A Yes. This is a copy of the letter and --

THE COURT: That is all he wants to know, is it a copy of the letter?

A Yes.

Q And that was the letter that withdrew your privilege of limited practice before the Internal Revenue Service, was it not?

A Yes.

Q Your explanation for the filing of your late returns was, as I understand it, that you were doing everybody else's work, is that right?

A Press of business.

Q And did you have a good practice throughout the year 1952, when you started, through 1965?

A No.

Q As a matter of fact, you didn't have a very good business at all, did you?

A That is right. The public accounting business, and I was involved in others --

Q You were involved in others?

A Yes.

Q Like what?

A I had been appointed president of a small firm that was being purchased by a New York City holding company. And they acquired two other small firms under contract that they were putting me in charge of, and that kept me going from morning until night, trying to keep things together while they were making up their minds what to do. And they had difficulties between personalities in New York about which I know nothing, but they changed situations, and when they first took over, everything started to pick up nicely, and --

Q Just wait a second. What did you do for them?

A I managed their firms for them.

Q You managed the firms?

A Yes.

Q You mean you did the accounting work for them?

A That and I directed their workmen.

Q What years was this?

A It began, I believe, around 1959, and it went on through for part of '60 when they went out of business.

Q You maintained their books and records throughout that

period of time?

A I oversaw it.

Q What do you mean you "oversaw it"?

A Others actually maintained the books and records, a supervisor.

Q Your supervisor maintained the books and records?

A I oversaw people, different people, who were keeping various segments of those books and records, coordinated them, and came up with their financial statements, attended their meetings, was going from one lawsuit to another --

THE COURT: I wish we would get down to this lawsuit and brush away the cobwebs, and let's get down to the case here.

Q It is a fact, is it not, Mr. Conlin, that that was the Steuben Television Antenna System and the Steuben Electronics Corporation and the Chemung Valley Master Television Antenna Corporation, and the Montour Falls Master Television Antenna Corporation?

A Yes.

Q It is a fact, is it not, Mr. Conlin, that during an investigation by the Securities and Exchange Commission in 1961, and by the Internal Revenue Service in 1961, that you

claimed that you had very little to do with those corporations?

A What they were looking into involved the New York State interests. I had nothing to do whatsoever with any of that.

Q Mr. Conlin, isn't it a fact that they asked you to produce the books and records of that corporation, and you said that you didn't have them and that the only thing that you did was to produce financial statements but didn't have custody of the financial records?

A That is correct. At that time when they wanted them, they were all in New York.

Q Isn't it a fact that you said you didn't do very much work for these corporations?

A No.

Q And that you didn't receive very much salary from those corporations?

A That is true.

Q You didn't receive any salary, but you did a lot of work?

A That is true, hardly any. I was hoping the thing was going to pay off, and working up towards the future.

Q At the same time that they were investigating the corporations -- and you were the President of those corporations,

were you not?

A Yes.

Q Those corporations didn't file income tax returns, did they, during the years that you were president and during the year that you maintained the books?

A They were to be filed by the accountants that they had in from New York City, not me, and even before New York took over, they had accountants, outside accountants.

Q And you said it just wasn't your responsibility, and that is what you told them?

A That is correct.

THE COURT: When did this happen? What year?

A 1958 and 1959.

THE COURT: This indictment was returned in 1974.

Q Mr. Conlin, as I understand it, during the year 1973, you were very busy, is that right?

A Yes.

Q And you slept on the floor a half hour a night, two to four days a week?

A No.

Q Now you heard Miss Peterson, who is your employee, testify

that it was an average of three to four days a week?

THE COURT: He isn't responsible for what she said.

Q Well, is that accurate?

A I was impressed when I heard her say something like that. She also said she saw me there when she came back in the morning, and she saw me there when she left the night before, and you asked her if that is how she concluded it, and she said, "Yes."

Q How many nights did you stay overnight?

A There may have been a few weeks in the year when I did stay as many as three and four nights, but I don't believe I ever stayed on an average of more than one to two nights a week. There had been times in '74 when I had but not in '73.

Q So in '73 it was an average of one to two nights a week?

A I wouldn't say it was an average. I would say it was very, very often.

Q That is all night, but in addition to that, you also started work early in the morning, did you not?

A Yes.

Q And you didn't eat lunch?

A Oh, no. I saw that I ate.

Q You did eat?

A Oh, absolutely.

Q And did you eat every day?

A Every day.

Q So her testimony regarding your not eating is not accurate?

A No. You are incorrect. She saw food that was brought into me that I had not eaten. That is what she testified to. I didn't eat all the food that was brought into me. I ate very sparsely, but I ate.

Q Did you ever go out to lunch? Did you take time to go out to lunch?

A Very, very seldom.

Q And you say "very, very seldom." Was that once a week, twice a week?

A It could have been, perhaps.

THE COURT: There are many matters in this case that are much more important than what he had for lunch and how often.

MR. HOULIHAN: Would you mark this for identification?

(Government's Exhibit 76 marked for identification.)

Q Mr. Conlin, I show you G-76 marked for identification, which appears to be your 1973 income tax return, and there is a signature down at the bottom. Is that your signature and the signature of your wife?

A Yes.

Q And that is your 1973 tax return?

A Yes.

Q This was filed with the Internal Revenue Service, and it is dated October 13, 1975?

A Yes.

Q And you prepared this?

A Yes.

MR. BOULIHAN: I offer G-76.

MR. LEVY: No objection.

THE COURT: Received.

(Government's Exhibit 76 marked in evidence.)

Q Mr. Conlin, it is a fact, is it not, that you have taken a business deduction in 1973 for business luncheons in excess of $1,100?

A Those would be where I had made business travel and discussed business with my clients, and not for going out for pleasure and snacks.

Q So it is not an accurate description that you didn't have time to do anything?

A I had time to do everything. I made time to do everything. I don't know what you mean by "anything," or what your question was there. I am busy all the time.

MR. HOULIHAN: I will withdraw the question.

THE WITNESS: The front page is missing on that return, 1040-X.

Q 1040-X?

A 1040-X was stapled on that when that was filed.

Q And what is a 1040-X?

A Amendment.

MR. HOULIHAN: If the amendment is missing, we will certainly get that in, and I will have no objection to it.

Q Mr. Conlin, in the year 1973 you applied for a Small Business Administration loan, didn't you?

A Yes.

Q And what was the amount of your application, if you can recall?

A I am guessing. It was in the neighborhood of $24,000, I believe.

Q Your application, I believe, requested an amount of $27,000, is that correct?

A Yes. This was not prepared by me, but that is what this says.

THE COURT: Let's get this down, the question and answer particularly, then. You've got the application right in front of you, haven't you?

MR. HOULIHAN: I don't see it in there.

THE COURT: I don't think we ought to talk about the application unless we have the application, because I know there is one. Why be vague and approximate about it.

Q You requested a loan in the amount of $27,400, is that right?

A Yes.

Q And that is in your handwriting?

A Yes.

Q And you claimed a loss of $55,300, is that correct?

A That is correct, and there should be exhibits attached.

Q There are exhibits in front, are there not?

A Yes.

Q Is that what you mean?

A Yes.

Q And that substantiates each and every item that you lost, all of your assets?

A Yes.

Q With the exception of the house, is that right?

A That should include the house.

Q This particular list includes the house, or didn't you submit an appraisal on the house?

A The 55,000 includes the house.

Q The 55,000 includes the house, but the attachments here don't include the house?

A That is right. The 55,000 is replacement value, not cost.

Q Mr. Conlin, did you have an appraisal on the damage to your house?

A Yes.

Q And what was the value of your property just prior to the flood, according to that appraisal?

A I don't know. I would have to see the appraisal.

MR. HOULIHAN: Would you mark this for identification?

(Government's Exhibit 77 marked for identification.)

Q Mr. Conlin, as I understand it, the flood damaged your property pretty badly, didn't it?

A Yes.

Q The cellar was caved in on one side?

A On the back and on two sides.

Q The back and on two sides?

A And the rear on two sides. The front half remained.

Q The house didn't fall down into the cellar?

A We shored it up in time.

Q You shored it up?

A Yes.

Q Then you had miscellaneous water damage thoughout the house, is that right?

A It was very extensive damage.

Q Was it on the second floor?

A Not on the second floor.

Q Just on the first floor?

A Yes.

Q And in the basement?

A And halfway up the first floor.

Q Halfway up the first floor?

A Yes.

Q And subsequent to the time that you got your Small Business

Administration loan, you had the cellar walls put back, reconstructed, did you not?

A Yes.

Q And the interior of the house and the downstairs was reconstructed?

A Yes.

Q And you also made a certain amount of additions and improvements on the property, did you not?

A No improvements.

Q You made some additions?

A No additions.

Q Do you recall that that was approximately $10,000 worth of improvements?

A No. They loaned us $10,000 for personalty, not realty. Realty exceeded the $10,000 figure.

Q How much?

A I don't recall.

Q I show you Government's Exhibit 77 marked for identification, which appears to be your 1972 tax return. Is that your signature and the signature of your wife at the bottom?

A Yes.

Q Is that your 1972 tax return?

A Yes.

MR. HOULIHAN: I offer G-77.

MR. LEVY: I have no objection.

THE COURT: Received.

(Government's Exhibit 77 marked in evidence.)

Q Mr. Conlin, I show you Government's Exhibit 77 marked in evidence and refer you to the page of an appraisal by Millard Brush, Realtor, and you are familiar with Mr. Brush, are you not?

A Yes, I am.

Q And he is a client of yours, is he not?

A Yes.

Q As a matter of fact, you prepared Mr. Brush's SBA application loan, didn't you?

A No, I did not.

Q You assisted in that?

A No, I did not.

Q Did you prepare his income tax returns?

A Yes.

Q How long have you known Mr. Brush?

A I will have to guess. I believe at least a year or two before the flood. It could have been longer that I have

been doing his work. That is the only way I have known him.

Q It is a fact, is it not, that the appraisal that appears in your tax return says that the house immediately preceding the disaster flood was $21,500 and immediately following, the value of the property was zero?

A Yes.

Q Now it is a fact, is it not, that your house was still standing, wasn't it?

A Immediately after the flood, it was about to fall.

Q It was still standing, was it not?

A It was teetering.

Q And it could be repaired, could it not, and as a matter of fact, it was repaired?

A Long after.

Q If you had a crew there the next day, it could have been repaired, right?

A No. The crews weren't available, and --

Q Well, if the crews were there?

A No, not even the next day. It took about a week for the water to get out of the cellar.

Q And the land had no value at all?

A It was a cruddy mess.

Q The land had no value at all?

A It would cost more to clear the land to sell it than what the land was worth.

Q And isn't it a fact that you suggested to Mr. Brush that the value of your property after the flood be zero?

A No, sir, I never discussed that. I don't even know how he got the appraisal figure beforehand. I asked him for the appraisal, and there is another realtor's appraisal in there, too.

Q There is a second appraisal, Ethel Ireland?

A Yes.

Q She had the value of your house prior to the flood as $23,000?

A Yes.

Q And immediately after the flood was zero?

A Yes.

Q And that is in the identical language, is it not, the second two paragraphs are in the identical language on each one?

A Let me see if they are.

Q With the exception with one being $21,500 and the other one being $23,000?

A They dictated these letters. I want to see if they are

alike. I have never noticed. All I know is they are form letters. All realtors used form letters during the flood.

MR. LEVY: Will you just answer the question, please?

THE WITNESS: All right.

Q They are similar?

A They are not alike.

MR. HOULIHAN: I guess I don't have to read them. Since it is in evidence, the jury can make its own determination.

THE COURT: They certainly can. I don't think we are warranted in spending any time about it.

Q At the time of your loan application, you were required to submit a financial statement, were you not?

A Yes.

Q And that's shown in the first page of Government's Exhibit 2, and it shows that you have total assets in the value of $64,640, is that right?

A Yes.

Q And total liabilities of $2,000?

Q And you prepared that, did you not?

A Yes.

Q And that substantiates in portion the amount of loss that you claimed to have suffered as a result of the flood?

A Yes. This is the replacement value we were supposed to turn in to them.

Q It is a fact, is it not, that most of the items that you claim here are pretty new that you lost in the flood?

A No.

Q Some of them were very old?

A We would have to go through the list.

MR. HOULIHAN: We won't bother with that.

Would you mark these for identification?

(Government's Exhibits 78 and 79 marked for identification.)

Q Mr. Conlin, are you the same Walter Conlin that lives at 140 Fuller Avenue who on June 18, 969, made an offer to compromise a $25,000 tax assessment to the Internal Revenue Service with an offer of $652.04, showing a book value of assets of $30,003.18, and liabilities of $22,028.44?

A When was that?

Q June 18th, 1969.

A May I see that?

Q Do you recall talking about an assessment with an Internal Revenue agent?

A Yes.

THE COURT: The question was are you the same Walter Conlin? That is the question.

Q Are you the same Walter Conlin?

A Yes.

Q That was your statement to him that you had assets?

A (No response.)

Q I show you Government's Exhibit 79 for identification, and that reflects your assets and liabilities as of June, 1969?

A I have never seen this before. How the figures were arrived at, it must have been his own conclusion.

Q Didn't you have a conversation with Mr. Giglio at the time?

A Yes.

THE COURT: What is the document?

MR. HOULIHAN: The document is labeled "Rejection or Withdrawal Memo-

randum," a rejection of the taxpayer's offer --

THE COURT: It is a document that is signed by somebody, isn't it?

MR. HOULIHAN: Yes.

THE COURT: Who is it signed by?

MR. HOULIHAN: John P. Giglio, Revenue Officer.

Q Do you remember having a conversation with Mr. Giglio?

A Yes. He called me on the phone and asked for some information, and that is the extent of the conversation.

Q It is a fact, is it not, Mr. Conlin, that you did offer to compromise their claim for $652.54?

A Yes.

Q And that the amount of the assessment, including the penalties, was $25,000, in excess of $25,000?

A To which I disagreed. I felt that the $650 was the correct tax.

Q Isn't it a fact that your assets at that time totaled just over $30,000 and that your liabilities totaled just over $22,000?

A We had to include for this accrued items. I do not include on tax returns receivables, for instance.

Q I am just talking about total assets. If somebody owes you money, that is considered an asset, isn't it?

A Yes, but I don't count it in taxes until I get it.

Q That is accurate, then?

A No.

Q It is not accurate?

A It is there, and I can see items that I generally can agree to, but I don't agree with the way it is set forth, nor do I agree with their totals.

Q I show you Government's Exhibit 78 marked for identification, Mr. Conlin, which appears to be a Statement of Financial Condition and Other Information in the name of Walter Conlin, and the home address of 140 Fuller Avenue, Corning, New York, which shows --

THE COURT: If it is a statement, is it signed?

Q And that is signed, is it not, Mr. Conlin?

A That one is signed.

Q And Marion Conlin, your wife, signed that as well?

A Yes.

Q And that is dated November 4th, 1967?

A Yes.

Q And that shows assets with a cost basis of $28,000 that

includes the home for $13,000, is that right?

MR. LEVY: I can't see how this is material.

A Yes.

MR. LEVY: This year is 1972, and we are going back now seven years to what his statement was there, and certainly, that can't affect his condition erratically, change in seven years. He said his business doubled in one year.

MR. HOULIHAN: Your Honor, this is based specifically on Mr. Conlin's claim on the Small Business Administration loan of assets of $64,000.

THE COURT: When?

MR. HOULIHAN: This was on the loan.

THE COURT: When?

MR. HOULIHAN: In 1972.

THE COURT: That is a difference of five years, isn't it?

MR. HOULIHAN: Yes, Your Honor.

THE COURT: I will sustain the

objection.

MR. HOULIHAN: Your Honor, I have his income tax returns for the years intervening. May I continue with that if I have his income tax returns for the intervening years to show an increase.

THE COURT: What is your theory? Is your theory that his financial condition had to be the same in '67 as it was five years later?

MR. HOULIHAN: My theory is that he overstated his assets on his loan application to the Small Business Administration.

THE COURT: When?

MR. HOULIHAN: In 1972 when he applied, or in 1973, January, 1973.

THE COURT: Isn't that a difference of five years, then, from the financial statement you are now examining about which was five years earlier?

MR. HOULIHAN: Yes, Your Honor,

except that the income tax returns for the intervening years do not show that kind of increase in income.

THE COURT: I don't know at the moment what they show. I haven't got them before me.

MR. LEVY: Your Honor, the charge here in the indictment is failure to file this particular --

THE COURT: He is attempting in this way to attack his credibility. He can do that even if it goes back a long ways.

MR. LEVY: I agree.

Q Mr. Conlin, on Government's Exhibit 78, that shows that you had assets with a cost basis including a $13,000 house of $28,987.37, is that right?

A Yes, but you don't use cost or an SBA application. You use replacement cost. "What are you going to have to pay new to replace what you lost?"

Q It shows liabilities here of $34,777, is that correct?

A Yes. I see in there liabilities that have been cancelled.

Q This was in 1967, and the 1969 financial statement is an

update of the 1967 one, was it not?

A Yes. The Revenue Officer wanted to put down values that they could be sold for at that time, not what they cost me.

Q At the time that that was submitted, you were trying to compromise a claim?

A He wanted to know what I had, how much cash I could get in a forced sale. That is what all those figures portend.

Q At the time you were trying to show to the Internal Revenue Service that you didn't have enough money to pay the taxes that they said?

A This is what Mr. Giglio compiled in a conference with me. He is the one that directed the slant of the whole thing. All I did was give him information he requested, because I requested an offer and compromise.

MR. HOULIHAN: Would you mark these for identification?

(Government's Exhibits 80 and 81 marked for identification.)

Q Mr. Conlin, I show you Government's Exhibit 80 marked for identification. Is that the 1969 tax return signed by you?

A Yes.

Q And that is dated 10-29-71?

A Yes.

Q I show you Government's Exhibit 81 marked for identifica-

tion. Is that your 1970 tax return?

A Yes.

Q And that is dated 10-29-71?

A Yes. These have been --

THE COURT: Please, just answer the question that he asks you.

A They are incomplete, yes.

Q What is incomplete about them?

A 1040-X has been taken off the face of them.

THE COURT: You mean something has been removed from them?

A Yes, sir.

Q The 1040-X is an amendment to the 1970 and the 1969 returns, showing that your income was lower as a result of flood loss that you received, is that right?

A We had to take a casualty loss carried back and go through those years.

Q So there is an amended return that goes on that, but in the absence of the casualty loss, carry-over, this is an accurate reflection of your income?

A Yes.

MR. HOULIHAN: I offer G-78, G-79, G-80 and G-81.

MR. LEVY: No objection.

THE COURT: I don't know what Exhibit G-79 is even.

MR. HOULIHAN: G-79 is labeled "Rejection or Withdrawal Memorandum."

THE COURT: Whose memorandum is it?

MR. HOULIHAN: It is the memorandum of John P. Giglio.

THE COURT: That is IRS?

MR. HOULIHAN: IRS.

MR. LEVY: May I look at these, Your Honor? I haven't had a chance to really look at them.

(Pause in the proceedings.)

MR. LEVY: Your Honor, I'm going to object to Exhibit G-79 as not being his memorandum, and it was prepared by somebody else, and certainly can't be used as against him.

THE COURT: Objection is overruled. G-78 through G-81 are received in evidence.

(Government's Exhibits 78, 79, 80 and 81 marked in evidence.)

Q Mr. Conlin, the assets, in basis of cost, would be higher than their value at the time, isn't that generally true, except with the exception of real estate? Most personal items decrease in value?

A Would you restate that question, please?

Q Generally speaking, don't personal items decrease in value?

A In market value. That is my opinion.

Q So an estimate based on cost would be higher than normal with regard to personal property?

A Higher than what?

Q Higher than a market value?

A After you had them a number of years, you mean?

Q Yes.

A Yes.

Q Government's Exhibit 79 shows assets of $30,000 in round figures, liabilities of $22,000 in 1969, taxable income, adjusted gross income was $5,619. In 1970 your adjusted gross income was $5,778. In 1971 gross income, according to the tax return that you submitted to the Small Business Administration, adjusted gross income of $21,476. In 1972 you had adjusted gross income of $3,879.

Now, Mr. Conlin, isn't that correct that at the time that you submitted your application to the Small Business

Administration that you did not have assets of $64,000, isn't that correct?

A On that application, that is the replacement cost we were supposed to submit to the Small Business Administration, and that is what I submitted to them.

Q Your claim is that you had assets at cost in the amount of $64,000 on the day you submitted that application?

A Not on the day I submitted that application -- at the time of the flood.

Q At the time of the flood?

A Yes.

Q At the time of the flood, so that would be in the middle of 1972, so half of your income for 1972 wouldn't be included, would it, to make up those assets?

A I only had about a half-year income in 1972.

Q At the time you submitted your loan request for $27,000, you had to submit a copy of your income tax return, did you not?

A Yes.

Q And when did you prepare that return, Mr. Conlin?

A The '70 had been filed. The '71 I had prepared and decided to go on an extension to June 15th, and I re-extended it to July 15th.

Q Why did you prepare it and then get an extension?

A Because it was so close to the 15th of April that I wanted to review it. It was considerably improved over the years. I wanted to review it.

Q But it turns out that that was accurate, wasn't it?

A It turns out I lost some of my records to review it with, so I used it, and as far as I'm concerned, I prepared it accurately.

Q This shows that you prepared that return, does it not, on March 2nd, 1972?

A That is April.

Q April 2nd, 1972?

A Right.

Q And this is the one that you submitted to the Small Business Administration?

A Yes.

Q Now there came a time, did there not, Mr. Conlin, that Internal Revenue Agent Donald Meyer came to you, conducting an investigation as to why you had not filed your 1969, 1970 and 1971 returns?

A Yes.

Q You heard Mr. Meyer testify, didn't you, that he interviewed you on October 26th, 1972, and you said you were too busy

to talk to him, isn't that right?

A Yes.

Q And he advised you of your rights at that time, didn't he?

A He advised me of my rights, and I told him I would like to make an appointment with him for the interview.

Q But you couldn't meet with him that day?

A That is true. He stopped in unannounced.

Q And you did, some two weeks later, I believe, come to Rochester, is that right?

A I don't recall the date.

Q But it was in November sometime?

A I don't recall even the month.

Q And you told him at that time that you gave him retained copies of your '69 return, and you gave him retained copies of your 1970 return, isn't that correct?

A He looked at my copies.

Q And he made copies of those?

A I believe that is what he did.

Q And you didn't lose those records in the flood, did you?

A No. They were in my office in a briefcase.

Q They were in your office?

A Yes, in a breifcase.

Q And at that time you told him that you had not prepared

your 1971 tax return. That is a fact, is it not?

A In 1971, it had not been filed. It was on extension.

THE COURT: That isn't the question. The question is had it been prepared at that time?

A Yes, it had been prepared, but they wanted to have a filed return. I showed them why it wasn't filed.

Q Mr. Conlin, isn't it a fact that they had no record of you filing your '69 or '70 returns?

A They found them and sent me questionnaires, and there is the transposition on the Social Security number, and I filled in their information on the questionnaires, because they had located them, and the Social Security number was wrong, and I gave them the information they wanted, and everything went through, and Mr. Meyer was no longer on the job.

Q It is a fact at that time, is it not, that you gave Mr. Meyer a copy of your application for an automatic extension of time to file?

A Yes.

Q And at that time you made a copy of it?

A Yes.

Q And in addition, you gave him a copy of a Cashier's check

in the amount of $1,585, payable to the Internal Revenue Service?

A Yes.

Q And he made copies of that, and it is Government's Exhibit 54 in evidence, is it not?

A Yes.

Q On this Government's Exhibit 54, it says, "1971 Estimated Tax Payments," and there is nothing written in there, is there?

A No.

Q And it states that the total balance due, the total of the lines 2, 3 and 4 is zero, and that is typed in, is it not?

A We frequently don't -- we just want to get this automatic in. We put in an amount and send a check with it.

Q And you told Mr. Meyer at that time that you paid $1,585 and gave him that record, didn't you?

A Yes.

Q On the income tax return submitted to the Small Business Administration, there is no notation on this income tax return, is there, that it hadn't been filed yet?

A No.

THE COURT: An income tax return doesn't become a return until it is

filed, does it?

MR. HOULIHAN: No, Your Honor.

THE COURT: I am not asking you. I am asking the witness, an accountant.

Isn't that what a return means? It means it has been filed with the Internal Revenue Service?

A Then it becomes a return, yes.

THE COURT: Before that, no matter how much you work on it, or whether you finalize it in your own office, it is not a return, is it?

A Not until it is filed.

Q So you knew that at the time you submitted this, that this was not a return?

A Yes.

Q But yet, you dated it April 2nd, 1972?

A That is the date when I originally prepared it.

Q And that is in your handwriting, is it not?

A Yes.

Q And there is no notation on there that it had never been filed, is there?

A No.

Q And that shows an estimated tax payment, does it, in the amount of $4,200?

A Yes.

Q And that would pay all of the taxes, as a matter of fact, wouldn't it, with the exception of $2.55?

A Yes.

Q And that would show that you didn't have any other liability to the Internal Revenue Service, wouldn't it?

A Yes.

Q As a matter of fact, as of November, 1972, some two months before you submitted this application, you told Mr. Meyer that you had only paid $1,585?

A No, I did not.

Q You didn't?

A No.

Q Is Mr. Meyer lying?

A No -- I don't know. I gave him the extension, and that happened to be attached to it. That is what I gave Mr. Meyer.

Q And that wasn't intended to show anything about the tax return?

A I never discussed the amount of any estimated declaration.

Q Mr. Conlin, this has your signature on it, and that is

Government's Exhibit 54?

A Yes.

Q And it is dated April 14, 1972?

A Yes.

Q And this would have been some ten days after you prepared the proposed return that you submitted to the Small Business Administration -- excuse me -- twelve days before?

A Yes.

Q And at that time on the proposed return that you submitted to the Small Business Administration, it shows $4,200?

A Yes.

Q And twelve days later you claim that you don't have any estimated tax payments, and you are paying $1,585?

A No.

Q That doesn't come out. Tell me why?

A We just sent in that form requesting automatic extension and sent that amount with it, without any indication of any credits or on hand or other, because I just didn't have any time to make a determination. I just sent in that amount of money with it. That is what we do for people all the time.

Q There came a time that you submitted that 1971 tax return, did you?

A Yes.

Q And that was submitted in October of 1975, was it not?

A Yes.

Q And that was submitted just prior to the first trial date fixed in this case, was it not?

A I don't know anything about any trial date other than this one, sir. October 15th, 1975, was my deadline for getting my flood losses in, and that is what I did.

Q You had a deadline of October 15, 1975, to file your 1971 income tax return?

A Yes, sir, extenuating circumstances, and the Regional Director's Office, Andover, Massachusetts, had hundreds of them, and I was one of them.

THE COURT: We will recess until two o'clock.

(A luncheon recess was taken at 12:35 p.m.)

- - -

Rochester, New York

Friday, April 2, 1976

2:10 P.M.

- - -

(Trial resumed; jury present.)

W A L T E R R. C O N L I N,

the Defendant, called as a witness in his own behalf, being previously duly sworn, testified further as follows:

CROSS EXAMINATION CONTINUED

BY MR. HOULIHAN:

Q Mr. Conlin, you prepared the 1972 and 1973 return of Richardean Wenderlich, is that correct?

A Yes.

Q It is a fact, is it not, that Mrs. Wenderlich went to you at the time she received notice from the Internal Revenue Service that her returns were going to be audited, and she went and talked with you about the audit?

A Yes.

Q And you took notes of your conversation with her at that time?

A Yes.

Q And at that time you were trying to justify a loss in excess of $9,500?

A We were trying to prepare substantiation for the audit. That was one of the items. We weren't trying to do anything in excess of.

Q And it is a fact, is it not, that the items that you testified to, Mrs. Wenderlich never told you about?

A No, sir.

Q Isn't it a fact that Mrs. Wenderlich told you that she did not suffer any damage as a result of the flood?

A No, sir. She even re-asserted it again shortly before the audit.

Q I show you Defendant's Exhibit 22 in evidence, which is the worksheet in preparation of the 1972 tax return of Richardean Wenderlich. Do you see anything on that worksheet that shows that she told you that she lost her greenhouse in the flood?

A There it is (indicating).

Q You mean this is the sheet in your own handwriting that was actually submitted on the tax return, is it not?

A Yes, prepared in front of her and with her. That was the year she told me everything.

Q And there are no notes on your yellow sheet of paper reflecting any conversation regarding any flood loss?

A No.

Q And it is a fact, is it not, that Mrs. Wenderlich did not lose her greenhouse in the flood?

A I can't testify to that fact, sir.

Q You heard Mrs. Wenderlich testify, didn't you?

A I heard her testify.

Q And she said that she did not lose the greenhouse in the flood, isn't that right?

A That is what she said here.

Q And she said she did not lose improvements in the flood, improvements that were dated 1960?

A That is what she said here.

Q And she testified that she did not lose the bridal consulting room that was constructed in 1963?

A That is what she said here.

Q And she said that she did not even own the truck that --

MR. LEVY: I object to that. Going through what Mrs. Wenderlich said is nothing binding on him, and it is not a basis of cross-examination.

THE COURT: He can deny it. The objection is overruled.

Q And she testified that she didn't even own the truck in 1972 that you wrote off here as lost in the flood, the

truck purchased in 1965?

A I heard some confusing testimony in regard to the truck. The first I was aware that there was any confusion other than that which was on the return is in my interview with her on August 12th, 1974, in preparation of substantiation of the audit.

Q And the remodeled boiler room, you heard her testify that the remodeled boiler room was constructed in October, 1971?

A I don't recall hearing her on that.

Q And this information sheet that you submitted with the tax return for 1972 says it was lost in the flood, isn't that right?

A That is put down exactly as she told me at the time I wrote that in front of her.

Q This is all in your handwriting, is it not?

A Yes.

Q And that is what was copied and submitted to the Internal Revenue Service?

A Yes.

Q Was Mrs. Wenderlich lying when she was saying that she did not tell you that?

MR. LEVY: I object. He isn't asked to characterize --

THE COURT: I will sustain the objection. I don't know how another person can determine another person is lying. He might determine that they are not accurately stating the facts. That doesn't mean they are lying.

The objection is sustained.

Q Mr. Conlin, was Mrs. Wenderlich not accurately stating the facts as she told them to you in preparation of her 1972 income tax return?

A As of my meeting with her on August 12th, 1974, I still had no reason to believe she was misstating the facts when I prepared her tax return.

Q Are you referring to some document?

A Yes.

MR. HOULIHAN: May I see that, please?

(Document handed to Mr. Houlihan.)

Q This was done at a time that you knew the investigation was going on, wasn't it?

A That was after she had received the audit letter.

Q And you knew that you were being investigated by the Internal Revenue Service, didn't you?

A Yes.

Q And you knew that concerned the preparation of 1972 tax returns, didn't you?

A Not anything to do with me. It was strictly her audit.

Q You knew there was an investigation concerning you at that time, didn't you?

A Yes.

Q And you knew it was in connection with your preparing false returns in 1972?

A No.

Q You didn't know that?

A No, sir.

Q I show you Government's Exhibit 82 marked for identification, which is a letter dated February 12th, 1974, from Robert McIntyre to Mr. Conlin at 140 Fuller Avenue, Corning, New York, and that is your address, is it not?

A Yes.

Q And this was by registered mail with return receipt requested, and there is a signature on that of Walter Conlin?

A That is a staff signature receiving that letter, yes.

Q You are saying that is not your signature?

THE COURT: The letter was re-

ceived.

THE WITNESS: The letter was received.

Q Doesn't that, in fact, inform you of the investigation?

A Yes. I knew it before that, too.

Q So your testimony that you just gave to me that you were not aware was not an accurate statement of the facts?

THE COURT: He didn't say that. He said he knew there was an investigation. He denied he knew the purpose of the investigation.

MR. HOULIHAN: I offer G-82.

MR. LEVY: I have no objection.

(Government's Exhibit 82 marked in evidence.)

MR. HOULIHAN: The first paragraph of this letter says, "As you are aware, the Intelligence Division of the Internal Revenue Service is conducting an investigation concerning your preparation of Federal Income Tax Returns."

THE COURT: Now what was the question that you asked him?

A It was in connection with that investigation.

THE COURT: This is just a debating society unless we have a question and answer here.

What is the question?

Q Did you, in fact, know at the time that you spoke to Mrs. Wenderlich that you were being investigated in connection with the preparation of tax returns?

A Yes.

Q And you knew at that time, did you not, that you had to substantiate everything that was on those tax returns, didn't you?

A For an audit, we would have to substantiate everything on the return, or there would be an adjustment.

Q Did you ask Mrs. Wenderlich whether she lost the greenhouse in the flood?

A You have my notes on that, and I can run down exactly every remark that was discussed pertaining to the substantiation.

THE COURT: We don't want you to run down every remark. We want you to answer the question.

(Last question read.)

THE WITNESS: That was not the topic of conversation that night. The topic of conversation was that it was now time for her to obtain a professional appraisal to substantiate her position on what she lost in the flood.

Q It is a fact, is it not, that it was not her position that she lost something in the flood, but your position that she lost something in the flood?

A I took no position on that, sir. It was her position.

Q Did you ask her when you were preparing the '72 tax return whether she lost the greenhouse in the flood?

A I did.

Q What did she say?

A She said she couldn't have sold it immediately after the flood. She had lost it in the flood.

Q Tell me exactly what she told you?

A I cannot recall conversations, but I have my memorandums of her answers.

Q Where is that memorandum?

A You have it before you. It is a schedule attached to the return, "Lost in 6-23-72 Flood."

Q That is the memorandum of your conversation?

A This is the actual record of the conversation. There is no object of making a separate memorandum and then transcribing it. I wrote that right there in front of her.

Q You didn't do that with any of the other ones, did you?

A Oh, yes, sir.

Q You wrote "Flood Loss" right on that yellow sheet of paper, didn't you?

A Where we discussed it, but there was no need to discuss it with her. She had the answers. These were her directions to me. I urged her to have a realtor. She didn't even want to do that.

Q Did she tell you she lost the greenhouse in the flood?

A Yes.

Q Did she tell you that she lost all of those other items in the flood that are shown on that Schedule?

A Yes.

Q And she said "lost in the flood"?

A "Lost in the flood." We headed it right up there just like that (indicating).

Q Did you have a conversation about what "lost in the flood" means?

A It was my understanding, and it was hers, that if she

couldn't sell it immediately after the flood, it was lost in the flood.

Q Now you say "immediately after the flood." What do you mean by that?

A The way Commerce Clearing House describes it.

Q What does that mean?

A You have it over here (indicating).

THE COURT: You don't mean that the whole market value was lost?

A The items are written off on top of the ground -- the ground was still there.

Q You are not saying that just because no one would buy it that it doesn't have a market value, or no one could buy it?

A In my opinion, if it is not salable, then there is no market for it.

Q You are saying that at four p.m. on June 23rd, which was after the flood, that it was not able to be sold?

A I said nothing about it. She read the Commerce Clearing House exhibit on my desk, and she gave me those opinions.

Q Mr. Conlin, did Mrs. Wenderlich bring in the Commerce Clearing House section to you?

A I have it.

Q Did she refer you to the section?

A No. I have the pages there for all my tax clients to look at in connection with the flood loss.

Q She said, "I want you to look at Commerce Clearing House regarding this loss?"

A No. I said that I wanted her to, and she did.

Q Didn't you interpret that section for her?

A No.

Q You just let her read it?

A She read the interpretation right there.

Q Isn't it a fact that it is your interpretation that at four p.m. since the martial law was declared, that no one could buy it; therefore, it didn't have any value?

A I didn't go into that with Mrs. Wenderlich.

Q Did she tell you that the greenhouse was washed away in the flood?

A She said that it was completely unsalable and unusable immediately after the flood, in her opinion.

Q Did you ask her what "immediately after the flood" means?

A No. I left that up to her.

Q It is your opinion "immediately after the flood" is four p.m., isn't it?

A No. Whenever a casualty is over, it is over, but the law

says "immediately after." The determination of "when" is "immediate."

Q And you interpret that to mean at that particular moment, is that right?

A At what particular moment?

Q Immediately that moment that the flood is over, isn't that what you are saying?

A That is the way I read it.

Q And that is despite the fact that twenty days later it might be sold for $30,000?

A That is not immediately after the flood. That is twenty days after the flood.

THE COURT: But we are talking about the value of the property immediately after the flood?

A Yes.

Q So is it your position that you only value property at one particular moment?

A The Commerce Clearing House says "immediately."

Q And you interpret "immediately" to be what?

A Immediately after, and that is what it says in black and white.

THE COURT: I am more inclined

to believe that this is just a debating society.

Q Is it a fact, Mr. Conlin, that you made this suggestion to at least five different realtors and that they rejected that suggestion?

A I had no knowledge of a rejection, and I made no suggestions.

Q Did you have a conversation with George Valley?

A No.

MR. LEVY: Your Honor, I am going to object to his interpretation of the rules. That is not why he is here.

THE COURT: Objection is overruled.

Q Did you ever have a conversation with George Valley concerning valuation of property immediately after the flood?

A Not as I recall.

Q Did you have a conversation with Matthew [illegible]stein concerning your interpretation of the Commerce Clearing House?

A Not as I recall. I don't even know the gentleman.

Q Are you familiar with the appraising firm of Callahan & Hooey, Inc.?

A Yes.

Q Did you talk with representatives of that firm regarding

appraisals?

A I recall Curtis Hooey.

Q Isn't it a fact that they told you that market value has to be based upon a stabilized market?

A I don't recall such a conversation.

MR. LEVY: I object to what they told him.

THE COURT: Objection is overruled. This is cross-examination. He has a wide latitude in cross-examination, and so do you on any witness that he produces.

THE WITNESS: I have no recollection of such a statement or remark or conversation on that.

Q Now on your Exhibit 22 in evidence, it says, "Lost in 6-23-72 flood," does it not?

A Yes.

Q Does it give any explanation of what is meant by "lost"?

A It states "Lost in 6-23-72 flood."

Q You wrote those words down there, did you not?

A Yes.

Q What does "lost" mean?

A In that schedule it meant we wrote off the undepreciated

balance remaining.

Q That means that all of these figures that you wrote off as lost in the flood would have a zero value afterwards, is that right?

A Immediately after. That is what that schedule means, yes.

Q Now a half-year later, a half-year after the flood, did this property have any market value?

A I believe it does.

Q Did you declare on the 1973 return that she had an increase in the market value of her property?

A No.

Q As a matter of fact, Mr. Conlin, did you show on the 1973 return information that the whole property lost, realty that you claim was lost in 1972 flood, has been rebuilt?

A No.

Q I show you Defendant's Exhibit 23 in evidence (indicating). Now this shows greenhouse, boiler room and building of $13,476, and it is a new basis, is it not?

A I re-established it on the 1973 depreciation schedule, what it was before.

Q And why?

A Because I was not satisfied with the results and the information provided me on the 1972 return. Therefore,

I did nothing with any of the substantial losses that was available for carry-back and carry-over into other years. And I let it stand at that, and I told her that we were going to have to re-establish that on the 1973 depreciation schedule and go back and amend the 1972 return unless she could show me to the contrary.

Q As a matter of fact, you never did amend the '72 return, did you?

A I never got time to do it yet.

Q You had time to do her '73 return and put these figures down, didn't you?

A That was the initial step towards '72.

Q And you didn't do the amended '72 return?

A Not as yet.

Q On this Government's Exhibit 23 in your handwriting, doesn't that show that the greenhouse, boiler room and building was constructed, or purchased, in October 26, 1970, some three years before this return was filed?

A We summarized what was on the prior schedule and put it in the top line.

Q And you knew full well from the prior schedule, did you not, that the greenhouse was constructed in 1959, didn't you?

A Yes. We just took these and summarized and put them on a summarized total.

Q You summarized, but you changed the date, didn't you?

A Not with any intention of changing a date. That was the total we arrived at as of that date.

Q As of that date?

A And it is very customary in preparing depreciation schedules to summarize detail and put them in in that manner rather than in detail.

Q And the same thing is true of the 1960 improvements? You just summarized that?

A It is all part of the summary.

Q And the same thing with the bridal consulting room? You just summarized that in there?

A Yes.

Q And the remodeling of the boiler room? You just summarized that in there, didn't you?

A Yes. I put it all back in.

Q And you put it in at the original cost, didn't you?

A Yes.

Q And that is despite the fact that she had already taken in prior years depreciation on that that substantially ate up the cost?

A It was not written off yet, and I had previously advised her months before preparing this return that that is what we had to do, in my opinion, unless she could show me otherwise.

Q Mr. Conlin, doesn't this return, D-22 in evidence, show that the greenhouse which cost $4,250 in 1959 had already been written off, some $2,833?

A In 1972, yes.

Q That was in 1972?

A Yes.

Q And in 1973, you put it in again at $4,250, didn't you?

A Yes.

Q And that is despite the fact that you also wrote off the balance of $1,417 the year before?

A Which I had told her would have to be amended.

Q And despite the fact that $4,250 was expended in 1959, you show on the 1973 return that this was done in 1970, don't you?

A No. I show it summarized on that date.

Q And the original cost value, do you not?

A Yes.

Q And then this allowable depreciation is just the difference in period of time from 10-26-1970 to the date of

this return, isn't it?

A That is correct.

Q So, in effect, you re-established that greenhouse at an original cost, even though she had already written off the original cost and would have, in effect, give her deductions for another twenty-five years that she wasn't entitled to?

A No, sir.

Q How did you arrive at the date of October 26, 1970?

A Summarizing from the 1972, we just added everything up.

Q It says right there on 1972 that the greenhouse was built in 1959. How do you get to 1970 from 1959?

A We summarized everything on this and brought it up to that one-line figure with the understanding we had to go back and research 1972. It is quite obvious that there are items on the 1972 depreciation schedule that did not belong there.

Q That is exactly my point. It is rather obvious, isn't it, Mr. Conlin?

A Yes. It was prepared from a list that she had given me.

Q It is rather obvious, isn't it, Mr. Conlin?

MR. LEVY: I object. It is argumentative.

THE COURT: Objection is overruled.

Q Go ahead. The Judge says you can answer.

A I told her it was obvious. That is why I insisted on amending it.

Q But you didn't amend it, did you?

A We hadn't gotten to it yet.

Q Does this 10-26-1970 represent any particular date? How did you get that date?

A Just as a date would be significant --

Q Wait a minute, significant as to what?

THE COURT: Would you give him a chance to answer the question?

What is the significance of that date?

A We pick a date -- a significance meaning to us this is the date which everything prior is summarized to.

Q How does showing a greenhouse constructed in '59 for $4,250 go into a tax return in the amount of $4,250 as being constructed in October of 1970?

A It was not intended to mean it was constructed in 1970.

Q What was it intended to mean?

A A significant date -- everything is summarized to this date, and that is why we have to go back and analyze on

the amended return everything that is summarized in that one significant date.

Q Why the date of 1970? Where did it come from? This was in 1974 that you prepared this return. Why didn't you use 1974?

A Because that would be confused with the dates subsequent. We wanted to show it was prior to the flood.

Q Isn't it a fact that it would be confusing because they might discover that you had written off all of these items the year before, in 1972, and then tried to re-establish them, giving her an additional twenty-five years of depreciation?

A No.

Q Why didn't you use the date of June 22nd --

THE COURT: This is just plain out and out argument.

Questions and answers are supposed to resolve factual questions or questions as to the validity of that opinion.

Q Mr. Conlin, I show you Defendant's Exhibit 24 in evidence. Can you tell me what that is?

A That is what I would refer to as a "T" account structure.

Q And what, in fact, does that show?

THE COURT: What?

Q What, in fact, does the "T" account structure show?

A Each "T" represents what would normally be a page in a general ledger.

Q You testified yesterday that Mrs. Wenderlich brought her books into you to prepare the 1973 return, did you not?

A Yes.

Q And you looked at those books, did you not?

A Yes.

Q And you copied figures out of those books, didn't you?

A Yes.

Q And those figures were copied from Government's Exhibit 64 in evidence?

A Yes.

Q As a matter of fact, right underneath the figures you took out, you put little marks, is that right?

A Yes.

Q And those are your marks, are they not?

A Yes.

Q And those are called accountant's marks, is that right?

A Yes.

Q And saying that you got that figure?

A Yes.

Q Mr. Conlin, on that schedule, you said that there was a $10,000 error. What was that?

A Right here (indicating).

Q Why is that an error?

A Because it is written as $14,986.50. And if you look at the book, Mr. Houlihan, you can see where that "2" could easily be interpreted as a "14," unless you look at it closely. If you look at it quickly, it could be interpreted as "14." And if you look at it closely, it is $24,986.50, exactly $10,000 more.

THE COURT: It isn't a question of interpretation. It is a question of legibility?

A Yes.

Q And that was your error, was it not?

A I admit that it must be my error.

Q It is a fact, is it not, that that figure appears on two other spots on Defendant's Exhibit 24?

A Yes. I take it from that and insert it in the property account.

Q That, in fact, decreases income, doesn't it?

A If income is ten thousand understated, it indeed does.

Q And if you understate income, that would be a benefit to the taxpayer, wouldn't it?

A To the taxpayer -- not to me.

Q To the taxpayer?

A Yes.

Q You mentioned in your testimony on direct examination that you added some figure of $3,700?

A $3,787.50 I added to sales.

Q And you just added it to sales?

A In order to make this balance and equal enough money to equal her pay-out.

Q Did her books and records disclose an entry in sales in the amount of $3,787?

A No, sir, but up here it showed she was shy $3,158 to pay out, so the difference between that would be some six hundred more dollars. I always do this. I always contact the taxpayer when things are unreasonable.

Q Where did you get the figure of $3,787?

A That is the amount required to make the "trial balance" balance.

Q You mean the figure was just pulled out of the air?

A No. She was $3,158.81 more paid out than what she took in.

Q So her expenses exceeded her income?

A I don't know about the expenses. All I am looking at is the cash flow.

Q You mean that her income did not equal what was paid out, so you had to add the $3,787?

A In situations like this, I normally assume that there is an understatement of income.

Q You assumed that there was an understatement of income, so you --

A I clear it with the taxpayer first.

Q And you just write that figure in?

A Yes, sir. If it is anything of significance, then we pursue it.

Q If it is anything of significance, then you pursue it?

A Yes.

Q Is $3,787.50 significant?

A She didn't seem to think so.

THE COURT: Did you think so?

A I thought it was. That is why I called her.

Q And did you go over her income with her?

A No. She never brought the books back to the office. I asked her to.

Q You asked her to?

A Yes.

Q Did you ask her what her income was? Did you ask her what her income figures were?

A When she was in my office preparing that, and I put them together and gave them to her.

Q No. After you found this error and you had to add the 3,787?

A She just told me to go ahead and put it in and --

Q She just told you that?

A Yes.

Q You didn't say, "Let's check your figures on income to see if you have more"?

A Yes, I did.

Q What did she do? Did she read you the same figure?

A I asked her if that might be borrowed money or invested money that wasn't reported in income. She said, "Go ahead and add it in."

Q Did she say that it was borrowed money? Did she tell you that?

A No. She just said to go ahead --

Q Did she say it was invested money?

A No.

Q Did she give you any explanation for it?

A No.

Q Did you tell her that you wanted her to give you the figures of gross income again?

A No. I already had them, I thought.

Q And you never checked into it?

A Not beyond my approval from her to proceed accordingly.

Q Mr. Conlin, I show you Government's Exhibit 9-A, which is your worksheet on Charles and Mary Ryder, is that correct?

A Yes.

Q It is your testimony that you prepared this at the time that the taxpayer was in your office discussing that return?

A Everything there was prepared at the time they were there that one night, because they were a new client.

Q Mr. Conlin, if I understand your testimony correctly, you charged forty dollars an hour, is that right?

A Yes.

Q Why do you charge forty dollars an hour?

A To cover my cost of operating an office and also to have some compensation for myself.

Q To cover the cost of operating your office and to compensate yourself?

A Yes.

Q You mean as a Public Accountant?

A Yes.

Q And would someone who is not a Public Accountant charge less than forty dollars an hour?

A I don't know. I used to.

THE COURT: He didn't say everybody should charge that. He didn't say anybody should charge that. He said he charged it, and not only for his own services but for all his office overhead. He didn't set that forth as a standard in the industry.

Q Isn't it a fact, Mr. Conlin, that you charged forty dollars an hour because you feel that you have a special expertise as a tax preparer to assist clients in preparing their tax returns and tell them what is deductible and what is not deductible and to compensate you for this, you charge forty dollars an hour?

A I naturally value my time, my talents and my services.

Q And that is why you charge forty dollars an hour?

A To cover all of my overhead and my cost of doing business and to provide myself compensation.

Q I call your attention to the worksheet of Charles and Mary Ryder, and according to your notes, when did they appear in your office?

A March 22nd, 1973.

Q And at what time?

A At 10:00 p.m.

Q What time did they leave?

A Eleven thirty.

Q And that was an hour and a half, was it not?

A That is correct.

Q Now at forty dollars an hour --

THE COURT: That isn't the whole thing of preparing a tax return, the interview, is it?

MR. HOULIHAN: That is what I want to find out.

THE COURT: You know it isn't, don't you? I say that you are wasting our time if you say his services are done when the interview is over. That is when they start.

Q Are your services done when the interview is over?

A In some cases, yes, and in some cases, no.

Q In the case of Mr. and Mrs. Ryder, was the services done at the time that you completed the interview?

A This was completed with them that night, but there were prior phone calls in a meeting with them in my office in connection with the work that I was doing for them.

Q Isn't it a fact that you got charges on here totaling $163?

A Yes, sir.

Q And this is "$3" on top. What does the $3 represent?

A Xerox has advised me I am undercharging. This is a three-dollar constant I put on the returns as a contribution towards some of the cost of doing the Xeroxing, and it in no way completes the compensation of it.

Q And the "$60," what does that reflect?

A The hour and a half of time.

Q And then you've got $40 for talent?

A Yes.

Q What is that? What is "talent"?

A They called upon me and my staff and spent considerable time where my staff was trying to explain to them what I was meaning about preparing a list of personal losses over and above those that they prepared for borrowing money for replacement from the SBA.

Q You described that as "talent"?

A Yes.

Q And did you explain that to them in the hour and a half that you talked to them?

A I went over it again, too, but not much time was spent on the flood aspect that night. They were supposed to come in prepared for it.

Q So there should be some notes for an additional meeting with the Ryders, is that right?

A There is no appointment time previously. There were many phone calls, and they did come in and spend time with my staff on what I meant by a list of personalty that was lost, that was different from that which they borrowed money to replace.

Q In addition to your $40 an hour for the interview, you charged an extra $40 for "talent," to explain to them what the list is?

A No.

Q What?

A That "talent" charge is time they consumed drawing upon our time and explanation, illustrations, showing others to them why they could write off more on the tax return as a casualty loss, even though the Small Business Admin-

istration wouldn't loan them money to replace some of those items. They were of the opinion, Mr. Houlihan, that if they had an item like an antique, or some items that were not necessary for rebuilding their post-flood life, that they couldn't write it off because SBA wouldn't loan them money to replace it. SBA loaned money only to replace those items that were necessary to rebuild their life again after the flood. For instance, a person could write off skis, but they couldn't borrow money to buy skis from SBA.

Q And you didn't explain that to them in your hour and a half interview with them?

A They were to come prepared for that. At issue at that interview was, "Where was the list?"

Q Did you provide them information from the CCH Tax Service at that time?

A Yes. CCH I had on my desk, those Xerox pages, for the benefit of my clients to read so they could know first hand from the official Service rather than getting it from myself.

Q And then did you explain it to them?

A I don't recall if there was much of any explanation at that particular time.

Q You let them read the tax law and let them make their own decision?

A Oh, no. I let them read what there is here, what CCH explains, and here is the illustration right there in the Commerce Clearing House Manual. And "yes," we discussed it, but I can't recall what the discussion may have been with them in particular right now. Any discussions I would be glad to discuss with them, but I did insist on a list from them, and that is what they agreed to come in with.

Q This was during the hour and a half interview?

A Yes.

Q Now subsequent to that interview, did you talk to them about casualty loss?

A Following that interview?

Q Yes.

A It was concluded with them on the night of their appointment.

Q Did you talk with them after that?

A There may have been some conversation with them when they came in to sign their medical returns. I cannot recall.

Q Do you recall an hour conversation with them at the time they came in to sign the return?

A Usually, and especially with new clients, it is completely reviewed with them before they sign.

Q And this is after the tax return is already completed?

A Yes.

Q And you charged them an additional hour at that point, is that right?

A No. That is part of our overhead. We have what we call a flood charge.

Q I'm trying to find out, Mr. Conlin, what the $40 in "talent" is?

A I have just explained it to the best of my ability, sir, what I thought what that was.

Q In addition to the $40 for flood, the $40 for talent, the $60 for your time, and the $3 for Xeroxing is $163, which they paid you to do the 1972 tax return for them?

A Yes.

Q What is the $60 for?

THE COURT: This defendant isn't charged in this case with overcharging for preparing of income taxes. There is no regulation for the charge for preparation of income taxes. The IRS doesn't have any control over what he charges.

MR. HOULIHAN: Your Honor, I believe it goes to motive and intent.

THE COURT: The purpose of this examination is for him to justify what he charged for the preparation of income tax returns. And if it hasn't that purpose, I don't know what it is for.

MR. HOULIHAN: For motive and intent, Your Honor.

THE COURT: Motive for what?

MR. HOULIHAN: Motive for overstating a client's deductions, that that would permit him to charge more money.

THE COURT: I suppose if you rationalize far enough, you might reach that conclusion.

Q So on top of the talent charge, you charged an extra $60 for flood, is that right?

A Yes.

Q And this return did not include any appraisal?

A No -- it was personalty.

Q Mr. Conlin, on the worksheet provided by Mrs. Ryder, she

shows a telephone expense for "On call at Corning Hospital" of $15 per month, is that correct?

A That is what this says.

Q Did she tell you that?

A Let me see --

Q Let's look at the deduction on the return.

A I would like to see my worksheet.

(Pause in the proceedings.)

Q Is that correct, that they told you it was $180, fifteen times twelve?

A Fifteen dollars a month times twelve is $180 plus sales taxes, Federal Excise taxes bring it up to a total of $219.60.

Q So you added twenty two per cent on top of the $15 per month that they told you that they paid?

A That's right, seven per cent and fifteen per cent.

Q Did you ask them whether that was a total charge that they had to pay, $15 a month?

A This was excluding the taxes they had.

Q They told you that excluded the taxes?

A Yes. This was not the total bill. They had taken this out as a base charge, and it was not supposed to include any long-distance telephone calls, as I recall the conversation.

I usually try to be sure they don't include long-distance phone calls.

Q It is a fact, is it not, that Excise taxes on telephone calls are not deductible?

A This wasn't intended to be as a tax deduction. That is a business expense deduction. She was on twenty-four hour call. The phone bills aren't deductible, either, except for business.

Q You deducted $299 for gasoline taxes, did you not?

A Yes.

Q And I believe on your worksheet that is for 52,000 miles, is that right?

A Yes.

Q Did they give you any other figures with regard to mileage?

A As I recall, these were worked out with them, because they were endeavoring to determine what their overall mileage was for the year. I believe they had some miscellaneous memorandums of a few places they went when they came in, but when we ended up, these are the amounts they gave to me.

Q And that is the total amount of mileage?

A Yes. There is an error of five thousand in the addition here.

Q There is what?

A There is an error, I believe, of five thousand in the addition.

Q Was that an error in favor of the taxpayer?

A It should have been 45,000 miles, and I have 52,000 miles. It is purely an error in addition.

Q And that would give the taxpayer a greater deduction than they deserved, is that right?

A That is correct.

Q You deducted, did you not, on that particular income tax return 2,000 miles as a donation?

A 1,960 miles for Civil Defense.

Q Did you deduct the 1,960 miles from the total 52,000 miles that you gave him the deduction for?

A No, sir. That is purely an overstatement. I should have done it, and I do it regularly. That was an oversight.

Q Mr. Conlin, I show you Government's Exhibit 60 marked in evidence, and this is the worksheet prepared by Mrs. Ryder, and it says: "First Aid Station, 14 miles a day," and then it has got some handwriting of yours, does it not?

A There are some notations on there.

Q Does that say, "14 times 14"?

A That is what it appears.

Q What is "14 times 14"?

A (No response.)

Q Is it 1,960?

THE COURT: If it is one figure, it can't be any other figure, can it?

A That is just a surplus question. That takes time.

Q Fourteen times fourteen is 196 miles, isn't it, Mr. Conlin?

THE COURT: I'm sure we shouldn't keep the jury waiting while he figures out a simple problem of arithmetic.

A That is on her worksheet there. I don't have anything on my worksheet, so they must have worked it out in conversation with me and given me that figure to put on here.

Q Those are your figures, fourteen times fourteen, aren't they?

A I don't recognize them. They could be.

THE COURT: Just a moment. Look at it and see. Can't you tell your own handwriting?

(Pause in the proceedings.)

THE COURT: If you can't, all right.

THE WITNESS: Yes, it looks like it.

Q And that says "fourteen times fourteen"?

A Yes.

Q And then over on the side there is some more handwriting, isn't there? And that is your handwriting, isn't it?

A Yes.

Q And that says 1,960, doesn't it?

A Yes.

Q And it is times seven cents, isn't it?

A Right.

Q And that is the amount that you took as a charitable deduction?

A And that was under their instructions. I should have had that on my worksheet rather than their worksheet.

Q But you knew the figure fourteen times fourteen? This was just an error in multiplication?

A No, sir. There is something behind that 1,960. He was involved in something, too.

Q Is there any note on your worksheet regarding that?

A No, I don't have any of that on my worksheet.

Q And you don't have any notes on this particular worksheet of Mrs. Ryder in your handwriting showing any additional mileage?

A No. I concluded this was written in here in a discussion with them. I know he was involved in something as well

as she. And I remember the discussion which caused me to put that on there. Normally, I spell that out on here, and I should have.

Q But you didn't?

A I did not.

Q And that is an error?

A I wouldn't say it was an error.

THE COURT: If you can tell us what it is, tell us, and let's have it over with.

A It is not an error as far as I'm concerned.

Q What is it? How did you arrive at that figure?

A I don't happen to have memorandums on how I arrived at that.

THE COURT: You can't tell us, then?

A That's right.

THE COURT: All right. Let's pass to the next item.

Q If the taxpayer had only 106 miles in actual mileage as a donation, and you deducted 1,960 miles, that would be a benefit to the taxpayer, wouldn't it?

A It would be.

Q With regard to the child care on Mr. and Mrs. Ryder's

return, you have an amount equal to $1,180, is that correct?

A Yes.

Q And how did you figure that?

A At fifteen dollars, plus ten dollars a week for January, February, March and May; June, ten dollars a week, July and August; and another fifteen plus ten dollars a week except October, November and December.

Q So that was twenty-five dollars a week for ten months?

A Yes.

Q And fifteen dollars per week for two months, is that right?

A Fifteen dollars a week for two months?

Q Is that correct?

A No.

Q What?

A Ten dollars.

Q Now on the worksheet prepared by Mrs. Ryder and given to you, Government's Exhibit 60 in evidence, it shows just the opposite, doesn't it? It shows fifteen dollars a week for ten months and twenty-five dollars a week for two months?

A Yes.

Q When the child was not in school?

A I don't know about the "in school," but that is what the

sheet shows.

Q So the figures are just reversed, aren't they?

A Those are her information, and I have this information here.

THE COURT: That was her information. Where did you get your information?

A From them that night. They paid fifteen dollars a week plus ten dollars a week to someone else that wasn't going to report it on their return, and therefore, the understanding was they would not claim it. That ten dollars a week person was paid that all year long. The fifteen dollars a week they did not pay during the summer months or during the two months of the year, which turned out to be July and August. They were claiming fifteen dollars a week there, and it only should be ten dollars a week. That person wasn't going to claim it, so they weren't going to claim it on this return.

I have my memorandums right here where I discussed it with them, and they agreed that they would take it correctly, that they felt that they could have somebody to substantiate that fifteen dollars a week in the summer months if it was necessary. I said, 'No go. Put down what you actually paid."

Q So they asked you to falsify their return?

A They had intended to claim fifteen dollars a week for the months of July and August when they were only paying ten dollars a week.

Q And you refused to do it?

A Yes.

Q And in addition, they asked you to deduct more money than what was actually shown on the worksheet that they gave to you, isn't that right?

A In conversation with them, it was disclosed they had this ten dollars a week all year.

Q But that is over and above what they told you on this worksheet, is that right?

A It would be twenty-five dollars a week instead of fifteen dollars a week for ten months.

Q And the amount shown on the tax return is larger than the amounts that would be shown if these figures were used on the worksheet, is that right?

A It turns out that way, yes.

THE COURT: We will take a short recess.

(Recess from 3:20 p.m. to 3:50 p.m.)

Q Did you hear Mrs. Ryder's testimony in this courtroom?

A Yes.

Q Was she mistaken as to the facts she related to this court and jury?

A I can't recall her testimony.

THE COURT: She testified to a great many things. She may have been mistaken as to some and accurate as to others. Particularly, what do you have in mind.

Q Was she accurate as to the statements that she made with regard to the amount of money that she spent for a baby-sitter, child care?

MR. LEVY: I object to what she spent. It is what she told him she spent.

MR. HOULIHAN: I will rephrase the question, Your Honor.

Q Was she mistaken as to the amount of money that she told you that she spent for child care?

A I have here what she told me.

Q And is what you have there different from what she testified to?

A I can't recall what she testified to.

Q You were taking notes, weren't you, during her testimony?

A I didn't take notes on those particular items.

MR. LEVY: He isn't on trial for his notekeeping.

THE COURT: Objection is overruled.

I would like to get this thing wound up.

Q Mr. Conlin, turning to the tax return of Gary and Carol Warner, it is a fact, is it not, that --

THE COURT: In connection with that remark, the specific question is, did he assist in her making a fraudulent return? That is the question here.

I think what is embraced in your question was not concise. It wasn't understandable.

MR. HOULIHAN: I will withdraw the question, Your Honor.

Q In regard to the tax return of Mr. and Mrs. Warner, I believe you testified on direct examination that all trailer parks assess taxes on the people who live there, who rent the property?

A Yes.

Q that your understanding?

A Yes.

Q Even though they don't own it, the City taxes them?

A They own the mobile home.

Q But they don't own the property underneath it?

A That's right.

Q Isn't it a fact that the only person that is taxed is the trailer park owner?

A No.

Q And he is taxed a certain amount on each lot?

A No.

THE COURT: Well, different communities may charge different taxes.

Q That is a fact, is it not, Mr. Conlin, that you have to be the owner of the property in order to be taxed property taxes?

THE COURT: Where?

MR. HOULIHAN: In the State of New York.

THE COURT: You are attempting to say it is universal in the State of New York?

MR. HOULIHAN: Yes.

THE WITNESS: No.

Q It is not true?

A To my knowledge, it is not.

Q On the 1972 tax return, you show a deduction of $516.46 for a home mortgage, is that right?

A For mortgage interest.

Q Mortgage interest?

A Intended to mean mortgage interest on their mobile home.

Q How did you arrive at that figure?

A Your Honor, may I see my counsel?

THE COURT: What?

A May I see my counsel?

THE COURT: No, no. You are here to answer questions now. He can object if he thinks the question is objectionable.

THE WITNESS: Pardon me. I was looking at the wrong line.

I arrived at sixty payments at 71.73, which is $4,303.80 at twelve per cent is $516.46.

Q So you deducted the interest on all sixty payments in one year, isn't that a fact?

A That was the amount he said was due for the year 1972.

Q And he told you sixty payments?

A $4,303.80.

Q Did he tell you sixty payments?

A He said he had to make sixty payments of $71.73 so that he owed $4,303.80 in 1972.

Q And he told you he made the sixty payments in 1972?

A No. This is the balance he owed in 1972.

Q How much did he pay in prior years?

Did you discuss that at the time?

A I would have to look at the prior years. (Pause) But I see here he is a new client. This is the first I talked to him about it.

Q Refer to the casualty and theft portion of that return in 1972, and don't you have shown on there that the cost of the mobile home was $6,500?

A Yes.

Q Did he tell you that he made sixty payments and paid the whole amount of the mobile home in 1972?

A No.

Q But you wrote it off as sixty payments times 71.73 and then you took twelve per cent of that as the interest charge, is that right?

A On the balance owed in 1972.

Q Didn't you question whether the payments were made over a period of time?

A They obviously are made over a period of time. Yes, he said so right here, sixty months.

Q Sixty months?

A Yes.

Q So he made the payments over sixty months?

A Yes.

Q And the payments were $71.73?

A Yes.

Q And you deducted the whole amount of the interest in one year, didn't you?

A No, just the 1972 amount, twelve per cent.

Q What does the twelve per cent represent?

A The interest he said he paid on the unpaid balance.

Q If you make sixty payments over five years of 71.73, how much do you pay in one year?

A (No response.)

Q That would be twelve times 71.73, wouldn't it?

A Yes, out of which $516.46 would be interest.

Q That is your calculation, is that right?

A Yes.

Q If twelve payments of 71.73 equals $860.76 and twelve per

cent interest on that yearly payment, would that equal $516.46?

A On the amount that he paid?

Q On $860.76?

A Could I have your question again, please?

Q Payments of $71.73 for twelve months equals a total payment for the year of $860.76, is that right?

A Yes.

Q What is the interest that he paid that year?

A $516.46.

Q Is $516.46 twelve per cent of $860?

A No. You figure interest on the unpaid balance, not on what you pay.

Q Don't payments include principal and interest?

A Yes.

Q So 71.73 included both principal payments and interest payments?

A Yes. That is what I concluded from this.

Q And you said sixty payments on there?

A Yes.

Q But that is not sixty payments in one year, is it?

A No.

Q Over how many years would that payment be made?

A Five years.

Q How much would he pay in one year?

A Twelve times 71.73, according to this.

Q Will you accept my figure of $860.76 as being the total of the principal and interest payments for that year?

A It sounds all right.

Q And you are concluding that if he paid a total of $860.76 in one year, that of that he paid interest of $516.40?

A Yes. Now whether that interest was included in his principal payment, I don't have any memorandums whether we even discussed that. But in talking with you now on the surface, it would appear that that would be true, or it could even be on top of the principal payment. All I know is here is calculated how much he owed on which he paid principal and made the calculations on the figures he gave me, and he said he owed a balance of 4303.80, and his interest rate on that was twelve per cent on the unpaid portion each year.

Q That is what he told you?

A Yes. That is the way I understood it.

Q Did you hear Mr. Warner testify at this trial that he had paid off the travel trailer before the year 1972?

A I didn't hear that.

Q I'm calling your attention to your worksheet on Paul and Vicki Carozzoni, and it is a fact, is it not, Mr. Conlin, that that was the first time that they ever came to you to prepare tax returns?

A Yes.

Q And isn't it your practice when people first come to you to determine what items of income that they have?

A I asked them what income they had to report.

Q And did they tell you that they owned an apartment?

A As I recall, I was advised they had purchased a home and were in the process of remodeling it, that it would have up and down apartments, and it was hit by the flood.

And they got into the casualty loss, and I outlined within the necessity when it became rental property.

Q Did you ask them if they had any income from rental property?

A No, I didn't.

Q But as a matter of fact, you have a note right on your worksheet, and it says, "Up and down apartments," doesn't it?

A "Up and down apartments," right.

Q And that is in your handwriting?

A That's correct.

Q And you never asked them whether or not they had any income

from that?

A No.

Q And if they did have income from apartments and it was not reported, that would be to the taxpayers' benefit, would it?

A Yes.

Q I call your attention to the 1972 tax return of Mr. and Mrs. Carrozoni, and this shows sales tax deducted for building materials of $558.82, does it not?

A Yes. May I have my worksheet?

Q Is that what it shows?

A "Post-flood rebuilding." That is what that means.

Q That means "post-flood rebuilding"?

A Right, sales tax.

Q Referring to your notes, what does that figure of $558.82 refer to?

A $2,800 to a store, Silver Peacock; $19.10 for paint; $5.52 for pine; $7.38 for a Dura-bed -- well, it is Dura-bead or Dura-braid, or something here. And ceiling material, $86.11; and there is $26.36 for something that I can't quite read my abbreviation here. And $175.28 for plumbing; $256.53, plus another $49.05 for electric; $134.63 for wall material; $383.06 to Wolcott's; $1,261.92 for carpeting; total of $5,204.52, seven per cent

Q And that amounts to what figure?

A Three hundred and sixty four -- and then over here is the rest of it, $364.14, it looks like. Then they had invoices on these, $717.96, $910.29, $171.07, $979; total $2,778.32, at seven per cent. That is $194.48, and the two together equal $558.82.

Q That is what is shown?

A Which appeared on the return.

Q For building materials?

THE COURT: Tax.

A Both post-flood rebuilding. This is the sales tax on it.

Q All right. That says on that worksheet of yours, underneath the ones that you said they had invoices for, it says, "Furnishings are personal," does it not?

A That's right.

Q Those are furnishings?

A Right.

Q And not building materials?

A Post-flood rebuilding, replacement.

Q Isn't it a fact, Mr. Conlin, that they didn't get married until after the flood? They hadn't moved into their apartment?

A (No response.)

Q They got married after the flood, right?

A This is all post-flood purchases, however.

Q Furnishings?

A Yes.

Q And you said you made a note on there that it was personal. Now that would be as opposed to business, wouldn't it?

A Opposed to business, right.

THE COURT: Doesn't this item deal with tax on building materials?

A Sales tax. Post-flood rebuilding means replacement of personal effects --

THE COURT: I know what that means, but what I want to know, aren't we talking about a tax that you took for a deduction on, for building materials?

A Not intended to mean construction materials.

THE COURT: What?

A Not intended to mean construction of buildings.

THE COURT: What does "building" mean?

A Post-flood rebuilding is the term we used for everything in that flooded area. That is what the SBA loans --

THE COURT: You mean even buying

a new rug means building materials?

A Right, post-flood rebuilding. That is even the SBA terminology.

Q So you gave them a deduction for furnishings?

A Right.

Q For furnishing their own apartment, for sales tax over and above the table?

A Yes. The reason I mentioned that it was personal, to show that it wasn't going into their rental situation, when they rented it.

Q When they rented it?

A So he wouldn't set it up on a depreciation schedule.

Q So then you did have a discussion about whether or not the place was rented?

A Not that it was rented, that it was going to be rented. That is the way I interpreted everything here. I was advising them on how to keep the records separate for next year when it became rented.

Q Mr. Conlin, refer to the schedule attached under "Business expenses as a plumbing tradesman," and the original return has a statement on it, and it has a Xerox copy of your worksheet, is that right?

A Yes, sir.

Q And that is all done in your own handwriting?

A Yes, sir.

Q Did you ask Mr. Carozzoni whether he owned his own tools?

A It never dawned on me to ask him that. We discussed the tools.

Q You never asked him who owned them?

A No.

Q Did you ask him if he owned the truck?

A It never dawned on me that he didn't realize that he had to own the truck in order to take this deduction.

Q He didn't realize it?

A I said it never dawned on me that he did not realize it. I found out since that he didn't.

Q You didn't ask him that?

A No, I did not.

Q You are the one that was preparing the tax return, were you not?

A That is right.

Q And you were advising him as to what was deductible and not deductible, weren't you?

A I was pursuing all angles, and this was one of them.

Q You were pursuing all angles, but you neglected to pursue the angle of rental income?

A I didn't realize the place was rented, or I would have pursued it.

Q It is a fact, is it not, if he didn't own his own tools and that if he didn't own his own truck, that he would not be entitled to that deduction?

A That is true.

Q This was an error in favor of the taxpayer, then, is that correct?

A Yes.

Q Now calling your attention to the 1972 tax return of Lindbergh and Jane Payne, I show you Defendant's Exhibit 11 in evidence, and it is your worksheet, is it not?

A Yes.

Q On the worksheet does it show how high the water was in their basement?

A It just says, "Cellar is filled. Three feet around the house. Yard a mess. Cellar needs strengthening."

Q And the tax return that was filed on behalf of Mr. and Mrs. Payne shows water at six feet, does it not?

A Yes.

Q And that is in your handwriting, isn't it?

A Yes. That is what she told me.

Q But your notes show that it was three feet?

A No. Three feet around the house and yard. The cellar was filled.

Q And her cellar is six foot high?

A It is more than six feet high, I guess. I don't know. I didn't ask her.

Q If the cellar was six feet high and six feet around the house, wouldn't the cellar be full?

A Yes. That is what this says.

Q Where did the amount of personal casualty loss come from?

A I looked to see if maybe Mr. Payne had anything to say about it, but it appears just Jane Payne quoted it.

Q I show you Government's Exhibit 57 in evidence, which is the worksheets of Mr. and Mrs. Payne, and it shows that their estimated cost to replace their personal property was $1,183, does it not?

A That is his portion. He is in business, and that is his business portion, and she gave e the personal portion.

Q Assorted clothing, ironing board, is that part of his business?

A Books, bookcase, desk contents, chair, Black & Decker electric screwdrivers, assorted clothing in connection with -- and I can't quite make that out.

Q "Ironing board"?

A Yes. It says, "ironing board." It must have been in the cellar, I guess.

And tool box contents, saws, electric equipment, fishing equipment, table radio, blow torch, table lamp.

Now Jane has clothing, too. That must have been Lindbergh's clothing, and she gave me the rest. She would give me whatever furnishings she had, and together she came up with, adding what she had to her husband's, was $3,700.

Now she did not have a list, apparently, because I so drastically reduced it. I only took $1,200, which is just seventeen dollars more than what he had I just apparently took a third of it approximately, thirty per cent.

Q On that worksheet it says that that is the estimated cost to replace them, isn't it?

A Yes.

Q You didn't, in face, take any seventy per cent, did you?

A Well, twelve hundred is less than one third of 3,700. It looks like I took around thirty per cent of their whole thing, including this $1,183.

Q Also the $3,700 that is shown on the personalty was in addition to the stuff that is shown on the worksheet?

A It includes this.

Q It includes that?

A Yes.

Q So that there was some $2,500 worth of clothing and personal property in the cellar that Mrs. Payne told you about?

A No -- including this, that would make it roughly around $2,600 more.

Q And she didn't have any list or anything like that?

A What she had with her she took back with her, but this I got from her verbally that night.

Q Verbally, but she did leave you this list, didn't she?

A Lindbergh came and gave me that list himself with her. He could not stay. That is why he wrote it down. Normally, he never writes it down.

Q And she gave you information on top of that?

A Yes. I stayed for the appointment.

Q She stayed for the appointment, and Lindbergh went home?

A I don't know where he went.

Q But he wasn't there?

A He couldn't stay.

Q And the next day Mrs. Payne came in to see you to tell you something that she didn't want to tell in front of her

husband who wasn't there at the time of the appointment, is that right?

A The prior year that is true. This year she just came in with additional information because she didn't have it with her.

Q Because she didn't have it with her?

A Yes. She was with her husband when she came in.

Q But she stayed at the interview without her husband, didn't she?

A That is right, but she didn't have it with her when she came, so she came in the next day with it.

Q Did you hear Mrs. Payne testify that she did not give you any more information other than what is on that worksheet?

A No.

Q If she did testify in that way, would she be mistaken?

A If she testified that way, she obviously didn't see what the worksheet contained. That was just Lindbergh's business on this worksheet, and his personal.

Q Lindbergh's business includes clothing and an ironing board, is that right?

A (No response.)

Q Do you know what kind of business he is in?

A He works for Corning Glass, and he also is a Constable.

Q And does he use the ironing board in connection with his Constable business or in connection with employment at Corning Glass Works?

A I recall conversations, I believe, that he might even press his own uniform. I don't know now. Whose ironing board it is, I don't know. It was on the list that was given to me.

Q I call your attention now to the tax return of Casper and Lelia Minier, and I show you Defendant's Exhibit 17 in evidence, which is your worksheets, is that correct?

A Yes.

Q Now with regard to the gas mileage, how many miles did Mr. and Mrs. Minier tell you that they drove that year?

A He said two thousand more than the prior year. This was the flood year.

Q Okay, and how much was the prior year?

A Maybe I have it here. I will look and see. (Pause)

It is 52,000.

Q So you deducted for 54,000?

A 54,000, right.

Q Did he explain why he had the additional mileage?

A He indicated it was the flood year. He even said that in testimony here.

Q You do recall that testimony of Mr. Minier?

A I have heard him say that several times because we have gone through an audit with him.

Q And why would he have more mileage in the flood year? Did he tell you?

THE COURT: It doesn't make any difference why he would have any more. If he told him he had more, that was it.

Q Did he tell you why he had more?

A I heard him mention it was a flood year. That is all I know. And he had more mileage in the flood year.

Q It is a fact, is it not, Mr. Conlin, that in addition to the 54,000 miles that you deducted as a gasoline expense under the taxes of Mr. Minier, that you deducted an additional 22,000 miles for a business expense, isn't that right?

A Yes, 22,014 miles.

Q And that was over and above the 54,000 miles?

A No, sir.

Q Now on your worksheet it shows 25,000 and 29,000, is that right?

A Yes.

Q And that is for the cars, isn't it?

A That is correct.

Q And that says 54,000 miles?

A That's correct.

Q And that is computed as 100 and 173, and that is a total deduction for gas of $273 gas taxes, isn't that right?

A 100 and 173 is a total of $273.

Q And that is exactly what was deducted under the taxes for State and local gasoline on Mr. and Mrs. Minier's tax return?

A That is correct.

Q Now in addition to that, you deducted an additional 22,000 miles?

A That is correct.

Q And that was over and above the 54,000?

A It should not have been. You see, the prior year I deducted the business mileage, and I overlooked it this year.

Q Is that an error?

A That is an error on my part, pure and simple, and no question about it.

Q And that is an error in favor of the taxpayer, is it not?

A Yes.

Q I call your attention to the '72 tax return of Arthur M. and Jane Lamb, and I show you Defendant's Exhibit 18 in

evidence, and that is your worksheet, is it not?

A Yes.

Q And Mrs. Lamb gave you a worksheet, did she not?

A Yes.

Q And she never talked to you?

A That is correct. She didn't give me the worksheet. She left it in the office.

Q And you prepared her return and her husband's return in reference to that worksheet?

A I did not use the worksheet. I got my information from Arthur Lamb.

Q When did Mr. Lamb come in?

A On April 14, 1973.

Q There is no mistake to that?

A This is the day when I prepared the return. He did not have an appointment, and what I would do with him was sandwich him in when he would come in, and I would lean on the Xerox if I had someone in my office, and I run through the items on the prior return with them. He always wanted it short. He didn't want to spend any time, and he --

THE COURT: We are not talking about "always." We are talking about

one particular year.

Q Did you lean on the Xerox machine and talk with him from 12:45 until 2:10 in the afternoon?

A He most likely came into my office. It is difficult for me to say exactly where I talked with him, but I talked with him down in the drugstore. I talked with him in my center office and in my front office. I would sit down, and he would bring in information, and also in my office.

THE COURT: Now we are talking about 1973. Mrs. Lamb came in first.

A Yes.

THE COURT: You testified that later he came in?

A Yes, several times.

THE COURT: You said you talked with him later?

A Yes.

THE COURT: You remember that, don't you?

A Every year I do, yes.

THE COURT: I don't care about "every year." I'm talking about one year.

A 1973, yes.

THE COURT: We are not talking about any year. I want you to understand that.

A Yes.

THE COURT: We are not talking about any year at the moment except the 1972 return which you were talking about in 1973.

Now we are not talking about "every year." We are talking about this year.

A Yes.

Q Now you understand that?

A Yes.

Q All right. Now you remember that you talked to him about the figures that would go into his '72 returns after Mrs. Lamb had been in and gone?

A Yes.

THE COURT: All right. That is the conversation we are talking about.

A Yes.

Q And this was a face-to-face conversation?

A Face to face and telephone.

Q And telephone?

A Yes.

Q You took these notes when you talked to him face to face you testified on direct examination?

A That's right.

Q And without an appointment, he stayed there for an hour and a half, is that right?

A Well, I don't know how long he stayed there, but I began at 12:45 p.m., a quarter of one that day, with him, and that is when I started on this return.

Q When did he leave?

A I finished at 2:10.

THE COURT: We are talking about the interview.

A The interview.

THE COURT: We are not talking about how long you worked on his return. We are talking about the interview with Lamb, after Mrs. Lamb had been in.

A I can't say he was there the entire time. He was there at least a half hour.

THE COURT: Does that show on

your return?

A It shows that I spoke with him at 12:45 p.m. on April 14, 1973.

THE COURT: Does it say a half hour?

A No. It is close to 2:10 that day.

THE COURT: Is there any reference in there to half an hour?

A No.

THE COURT: Do you remember that, then?

A I remember he was in and spoke with me.

THE COURT: I know you remember he was in, but I am talking about if you remember how long he was there, because you said he was there at least a half hour.

A At least a half hour.

THE COURT: Do you remember that, or is there a note there?

A There is no note here. I remember that.

THE COURT: Then you do remember specifically about this interview?

A I certainly do.

THE COURT: All right.

Q And if he was there for at least a half hour, what is the remaining time that is charged there?

A He could have been there the whole time, 2:10.

THE COURT: He could have been, but do you remember how long he was there?

A I believe he had to go down to the drugstore to get some information, to make some phone calls, and come back.

THE COURT: Do you remember that, or are you guessing at it? And I am not criticizing you if you don't remember, but I would like to know how much you are guessing and how much you remember.

A I know he had to come in the second time with some more information, and then the third time we discussed an item on the phone.

THE COURT: We are talking at the moment about the first time he came in after Mrs. Lamb had been in.

A 12:45 p.m., April 14, 1973, he was there talking with me.

THE COURT: I know that definitely. Now we are talking about how

long he was there.

A That goes from a quarter to one to ten after two --

THE COURT: I know what is on that report, but that doesn't show how long he was in there, but you did testify he was in there at least a half hour and that you remembered that?

A I do.

THE COURT: What else do you remember about how long he was in there?

A Nothing exact.

THE COURT: All right.

Q And you remember another time in addition to this time?

A He came back.

Q When?

A The same day during the same period of time.

THE COURT: The period of time that is shown on there?

A Right.

Q How long was he gone?

A I don't know exactly, but long enough to go down to the drugstore and get what he had to have and come back.

THE COURT: How long was that?

Do you remember that, then?

A I would say about ten, fifteen minutes or less.

THE COURT: Are you guessing at that, or do you remember it?

A I am guessing at it.

THE COURT: Then if you guessing at it, he might have been gone for an hour, then, might he not?

A Well, he wasn't that long.

THE COURT: Do you remember that he wasn't?

A Yes.

Q The drugstore is right downstairs, is that right?

A Yes.

Q Your office is right above the drugstore?

A Right.

Q And when he came back, did he then stay with you the remaining period of time until 2:10?

A No. He had to go and check out this information.

Q What information?

A BankAmericard. He called that in. Now that could have been the next day.

Q But you don't have any note when that was in there?

A When I wrote that particular item, I just showed it came in by telephone.

Q How do you show it came in by telephone?

A On something that more information is needed, I wrote here, "Art will call this back." And I say it is "due" in red. When he calls it in, I write the amount down, and I put an "okay" over the "due" to show what we got. I put "d-u-e" as a code for everybody looking at my worksheet to see what is due in.

Q Just so I am straight on this, was Mr. Lamb in your office from 12:45 until 2:10 with the exception of ten or fifteen minutes when he went down to get some information and came right back upstairs?

A Generally speaking --

Q No, on this particular day?

A On this particular day, whether he stayed exactly until 2:10 I can't say precisely. But I had no reason to mark exactly when he went out. When I finished working on this, it was 2:10.

Q So the return was completed at 2:10?

A No. I had the balance of this information to come in. Then I turned it over to my staff to complete.

Q Are you aware that the figures that appear on this sheet

are different from the figures that Mrs. Payne testified that she gave you in her worksheet?

MR. LEVY: You have the wrong name.

MR. HOULIHAN: Excuse me -- I mean Mrs. Lamb.

THE COURT: Definitely he said that they got the additional information from him. And that is so clear, and that is the whole purpose of giving the interview with him, to show that he got different information from him than from her.

MR. HOULIHAN: Your Honor, I misspoke. I said "Payne," and I meant "Lamb."

THE COURT: I know you meant "Lamb." I know who you are talking about. We are talking about Lamb.

It is so apparent that I am surprised you would ask a question about that. There is a difference of a hundred dollars on one item here, namely,

BankAmericard. She gave it as a dollar, and he gave it as $101.

Q Mrs. Lamb's worksheet shows that she spent for medicine and drugs $295, and did Mr. Lamb give you the information of medical expenses in the amount of $349?

A May I have the worksheet?

(Worksheet handed to the witness.)

THE WITNESS: He had an average of $4.50 a month for drugs and sick room supplies, and $54 to her $295 came to $349.

Q And Mrs. Lamb's worksheet showed mileage, specific mileage, totaling 13,878 miles. What is the mileage that Mr. Lamb gave you?

A Two thousand miles less than the prior year.

Q What was it in the prior year?

A Fifty-eight thousand.

Q Did you question Mr. Lamb and say that it was different from the worksheet?

A No. I wasn't even referring to the worksheet.

Q But you had the worksheet?

A It was there.

Q But you never referred to it?

A Not for the mileage.

Q And there is $92.12 in installment purchase interest?

A Miscellaneous interest.

Q And that didn't appear on Mrs. Lamb's worksheet, did it?

A I don't recall.

Q You didn't refer to the worksheet, then, at all in preparing the return, is that right?

A Some items perhaps.

Q Some items you did and some items you didn't?

A Whatever reference that was made was made by Art with me there, if he used that source of information as a guide and then gave me the figures to put on the return.

Q You say "if." You are the one that had the worksheet.

A With him there.

Q But you had the worksheet?

A Yes, we had it. We had the worksheet when we were working on that.

Q Is it a fair statement that any figures that are different from what is shown on the worksheet were given to you by Mr. Lamb?

A In my discussion with Mr. Lamb, we arrived at the figures to put on this tax return.

Q Do you recall ever asking him why Mrs. Lamb shows different

amounts on her worksheet?

A Only if I had looked at it, and I think that is why I raised the question on BankAmericard interest. That is why he had to check it and call it in.

Q But you didn't ask him the same questions with regard to mileage and in any other connection?

A No. I just referred to the prior year return.

Q I call your attention to Defendant's Exhibit 13 in evidence, which is the 1972 work paper for Mr. Van Alstine, is that correct?

A Yes, sir.

Q And there is a figure on the 1972 tax return referring to installment purchases, is that correct?

A Miscellaneous interest, yes.

Q Well, it is not under "Miscellaneous interest," is it?

A That is the line we use for it.

Do you have a '71 return there, too, please?

Q A '72 return or '71?

A I've got the '72.

Q You want the '71 return?

A Yes.

(Pause in the proceedings.)

Q You put the $98.14 under Installment purchases, didn't you?

A Yes.

Q And there is space under the "Interest" portion of that return for "Other," isn't that right?

A Yes. That would have necessitated writing "Miscellaneous" beside it. We have always used this line for "Miscellaneous interest." But if there is any installment interest, I always wrote who they paid it to.

Q But you didn't do that in this case?

A Would you repeat your question, sir? What didn't I do?

Q You didn't write "Miscellaneous." You wrote it right under "Installment purchases"?

A Yes, like I always do.

Q And where did you get the figure $98.14?

A By referral to the prior year.

I would ask, "How much is it comparable this year to last year?"

And if he says, "Yes, maybe a little more," I might have called out, "Well, $98.14? Does that sound reasonable in relation to $97.72 in the prior year?"

And if he said, "That sounds reasonable," I put it in.

Q It is a fact, is it not, that $98.14 is the figure you used on many returns?

A If they don't come up with a figure, and I say, "Does

$98.14 sound reasonable?" And that was the figure I had been quoting to people, and if they say that it is reasonable, I put it down. But it would have to be close to the figure of the prior year. If there is any major change, then I would say, "Well, you realize this is so much more than last year, or so much less than last year." And if they gave me a figure over a hundred, then I would ask them to give me a breakdown.

Q So you would suggest $98.14, and if they said, "Okay," you would put it down?

A If they said that it was comparable to last year, I would say, "How much?"

And they would say, "What was last year?"

And I would read it to them. I would say, "Does $98.14 sound reasonable?" And if they would say, "Yes," I would write it down.

Q In the prior year you have got down $97.82?

A Right.

Q Where did the difference come in?

A He said to write down $98.14, and I said, "Is this close enough to last year? Is it real? Do you feel you have that much?"

And he said, "Yes."

Q And you did that with many people, didn't you?

A Yes.

Q You used the same figure, $98.14?

A It it was close to this figure. There were other figures. I always quoted close to what they had the prior year if they said, "It is close to last year."

Q Did you ever ask them for any proof of that?

A I've always discussed it with them when we set this up, the difference between the gross and net on utility bills, any extra charges on real estate taxes, any revolving charge accounts, any small miscellaneous items. In audit we have gone through some of these, and come to figures over one hundred dollars. They just didn't want to bother at this stage of the game to go through all these miscellaneous items.

Q So you just guessed $98.14?

A They are the ones that told me to put this down.

Q Now you just testified, am I correct, that you suggested $98.14?

A Right.

Q And they said, "Okay"?

A Right. They said to use that figure.

Q Did you hear Mr. Van Alstine testify in this courtroom?

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A Yes, I did.

Q And was he mistaken when he said that he didn't tell you that he paid interest of anything?

A He must be mistaken. He even has interest in '71 to Corning Glass Federal Credit Union.

THE COURT: That was in 1971?

A Right.

Q Do you remember Mr. Van Alstine testifying that if he can't pay cash, he doesn't get it?

A I don't recall that.

THE COURT: It is a quarter to five. We will recess until Monday morning at ten o'clock.

(At 4:45 p.m., an adjournment was taken to Monday, April 5, 1976.)

- - -

Rochester, New York

Monday, April 5, 1976

10:00 a.m.

- - -

(Trial resumed; jury present.)

W A L T E R R. C O N L I N,

the defendant, called as a witness in his own behalf, being previously duly sworn, testified further as follows:

CROSS EXAMINTION CONTINUED

BY MR. HOULIHAN:

Q Mr. Conlin, at the close of testimony on Friday, I was talking to you about Mr. Van Alstine's account and the preparation of his 1972 tax return. I show you Defendant's Exhibit 13 in evidence, which is your worksheet, as I understand it (indicating). Do you recall Mr. Van Alstine's testimony concerning any casualty loss that he had to his house?

A No, I do not.

Q At the time that you completed Mr. Van Alstine's tax return, were you aware that he had given you a note saying, "Do not take the $3,000 casualty loss?"

A Yes.

Q And you were aware that he didn't want a $3,000 casualty

loss because he didn't have any damage to his home?

A No.

Q Why did he give that note to you, Mr. Conlin?

A He explained to me that he didn't want that drop in market value to become public. He wanted the price on his house to remain high, as far as the public was concerned. He didn't want the local assessors to have the information of a drop in the market value.

Q The fact of the matter is, Mr. Conlin, that the assessors did drop valuations on houses just for tax purposes, didn't they, in the whole area?

A I am aware of some of that activity.

Q They did on your house, didn't they?

A Yes.

Q And you are aware that they did on all the properties in the area to help out the people that were damaged by the flood?

A Those that they felt were damaged by the flood, they dropped their assessment. I'm not aware of the general community activity.

Q Mr. Van Alstine dropped a note off to your office on March 14, 1973, saying, "Do not put in the $3,000 flood-related property devaluation." When did you decide to

put it back in?

A After he told me to.

Q When was that?

A After he discussed his note and purpose on the telephone with me.

Q When was that discussion?

A I don't know, offhand.

Q Do you recall his testimony where he said that he did not have a telephone conversation with you? Did he tell you to put it back in?

A No, I do not.

Q But you don't have any notes, either, in the records that were submitted into evidence or any place else indicating what date Mr. Van Alstine allegedly called you?

A I have a notation here that he said for me to do it on a phone conversation.

Q It is a fact that that notation could have been put on there at any time, isn't it?

A Before the return was filed.

Q That could have been put on after the return. It could have been put on a month before the trial, couldn't it?

A No, sir.

Q Why couldn't it?

A Because all these memorandums were part of the closed return file. Subsequent memorandums never are put on these. They are put on subsequent papers if there is any subsequent conference.

Q This is a rather unusual situation, isn't it, Mr. Conlin? I mean, you could put anything you want on those sheets of paper, couldn't you? That is just plain pencil writing.

A (No response.)

Q It could be done, couldn't it?

A No, sir.

Q You are not saying it can't be done?

A Absolutely. It isn't the way our office operates.

Q You are saying you didn't do it? Is that what you are saying?

A Repeat that question.

Q You are saying you didn't put that on after the indictment?

A Absolutely.

Q It could be done, couldn't it?

A No, sir.

Q No one could write on a piece of paper after an indictment?

A No, sir. There is no need to.

Q There certainly would be a need to, wouldn't there, Mr. Conlin? And there is a phrase here, "He called and asked

about assessor. When explained no relation, he wants the casualty loss."

I mean that would certainly be truly exculpatory, wouldn't it, to your situation, and directly contrary to what Mr. Van Alstine testified to on the stand?

A Here is a memorandum of my telephone conversation with him after he left the note, and here is his phone number at which I called him.

Q Now this, as well, could be done at any time, isn't that correct, Mr. Conlin?

A This was all part of the case before the return was completed.

Q Did you ever turn that information over to the Internal Revenue Service?

A I was never consulted by the Internal Revenue Service on this.

Q You were never asked to provide any information?

A No.

Q Government's Exhibit 82 in evidence is a letter dated February 14, 1974, and the second paragraph reads as follows:

"If you or your attorney desire to furnish any information relative to the investigation, please contact

me at the Intelligence Division, P. O. Box 305, Syracuse, New York, 13201, or telephone at 315-473-6610."

Q Now as a matter of fact, Mr. Conlin, they did invite you to provide information, didn't they?

A And we replied.

Q You didn't provide any of this information, did you, Mr. Conlin?

A Each time they were contacted, it was moved on to another office.

Q Did you provide the information that is in that memorandum to the Internal Revenue Service at any time?

A No.

Q And as a matter of fact, you have had some two years and three or four months since the investigation began to look over those records and make whatever changes to deem to appropriate, isn't that a fact?

A Time has passed, but the records haven't been touched or altered.

Q Do you recall Mr. Van Alstine's testimony that he has never purchased a pair of safety shoes?

A No, I do not.

Q Now on Mr. Van Alstine's income tax return, you put down a deduction of $60.44 for safety shoes, didn't you?

A Would you repeat that question?

Q You took a deduction on Mr. Van Alstine's 1972 income tax return in the amount of $61.44?

A Yes.

Q Where did you get that figure?

A Do you have the '71 return there?

(Document handed to the witness.)

THE WITNESS: Mr. Van Alstine said, "The same as last year."

Q And the year before, in 1971, where did you get the figure for the safety shoes?

A Mr. Van Alstine gave it to me.

Q He just gave it to you?

A Probably from the prior year.

Q Did you suggest the figure per pair of $30.72?

A I doubt it. I usually ask, "How much did you pay?" But the figure that is in here is as Mr. Van Alstine told me to put in the return.

Q That's the figure that he told you?

A Yes.

Q And you are sure of that?

A Yes.

Q You are aware, are you not, that Mr. Van Alstine pays over

ten per cent of his income to a community church of which he is a member?

A Only as he tells me each year.

Q You have had many conversations with him, haven't you, concerning his participation in church affairs, and you know that he always carries a Bible with him?

A I'm not aware of that.

Q Isn't it a fact that you have had many conversations with Mr. Van Alstine about church work?

A No.

Q Calling your attention to the 1972 tax return of Mr. and Mrs. Ross, you prepared their return, did you not?

A Yes.

Q And I show you Defendant's Exhibit 14 in evidence. Now Mrs. Ross provided you with a worksheet, did she not?

A No.

Q She didn't?

A No.

Q Do you recall her testimony on the stand here?

A No.

Q Do you recall Mrs. Ross testifying that the information that she gave you the night of your meeting with her came directly from a worksheet that she prepared?

A I don't recall.

Q The night that Mr. and Mrs. Ross came to your office, do you recall if they had a worksheet with them at the time?

A I don't recall.

Q Did they have any papers at all, Mr. Conlin?

A I imagine so, but I had no access to them.

Q You had no access to them?

A I didn't refer to them. I just had conversations with her.

Q Do you have any notes concerning any medical payments to Dr. Bresloff or Dr. Ober or Dr. Darling on your worksheet?

A Do you have the '71 return there?

(Document handed to the witness.)

THE WITNESS: Would you repeat the question?

Q Do you have any reference on your worksheet as to any expenses paid to Dr. Ober, Dr. Darling or Dr. Bresloff?

A Yes.

Q And what is that reference?

A $120, Dr. Bresloff; $25, Dr. Darling; $70, Dr. Ober.

Q Wait a minute. Where do those figures appear? Do they appear on the 1971 tax return?

A In colored pencil, yes.

MR. HOULIHAN: May I see that, please?

(Document handed to Mr. Houlihan.)

Q It is a fact, is it not, that you have got these figures on a yellow sheet of paper that appear on Defendant's Exhibit 14, is that right?

A Yes.

Q How did you happen to write in this particular case those items that are charged in the Indictment on the yellow worksheet; whereas, in other cases you just kind of check it off on previous returns?

A My worksheet indicates that she would call these in, and she called in all the medical items.

Q She called in all of the medical items?

A Yes.

Q And that is despite the fact that she had a worksheet with her at the time that she came in to prepare the return with you?

A She said she had to go back and check this out and call it in. My worksheet indicates she did.

Q She got right ahold of you, is that right?

A She called in on the same day.

Q The same day?

A Yes.

Q And she got to you and you wrote that information down, is that right?

A Yes.

Q Now under "Miscellaneous interest," you say, "Same estimate." Is that your estimate or her estimate?

A Her instructions to me were to estimate about the same, so I suggested this figure as being close to it. And she said, "It is probably a little less."

So for want of a figure, I asked her, "Is this close enough?"

She said, "Yes. Use it."

Q You suggested the figure, is that right?

A It is less than last year, right.

Q And this is the same figure that you suggested on any number of returns, isn't it, Mr. Conlin?

A It is probably a figure that when people told me to estimate, that from want of a figure, I said, "Is this close enough?"

Q Is this what you do when you help people fill out their income tax return? You just estimate whatever it is?

A When they tell me to use a figure like last year or close to a hundred, I say, "If it is a hundred or more, I would like to have the breakdown." If it is less than a hundred,

and if it is a miscellaneous compilation of many little items, I say, "Approximately the same as last year."

Q It is a fact, is it not, Mr. Conlin, that she never told you she had that interest at all and that you just put it down there?

A No.

Q Mr. and Mrs. Ross apparently purchased some safety shoes, is that correct?

A Yes.

Q Where did the figures for the safety shoes come from?

A From Mrs. Ross.

Q And did she give those to you orally, or were they part of her worksheet?

A Orally. He walks in oil.

Q He walks in oil?

A That is what it says here.

Q That is what it says on your return?

A Yes.

Q Do you have the 1971 return there?

A Yes.

Q They bought four pair of safety shoes last year as well, is that right?

A Yes.

Q And at the exact same price, $30.72?

A That is what she said.

Q And that is the same amount of money per pair of shoes that Mr. Van Alstine paid?

A It could be.

Q It could be?

A I imagine the safety shoes run about the same prices around town.

Q It is a fact, is it not, that Mrs. Ross never told you that she paid $30.72 for any pair of safety shoes?

A No.

Q Isn't it a fact that you just put that information down there without any basis for it?

A No.

Q What about the charitable contributions? According to Mrs. Ross, you just got nothing down for charitable contributions. Where did you get those figures?

A From the 1971 return. I reviewed it with Mrs. Ross item by item.

Q Did you hear her testimony regarding charitable deductions?

A I don't recall what she said.

Q She said that you estimated everything that was on there. Do you recall that?

A No.

Q What is "One Great Hour of Sharing"?

A A Protestant overseas relief group, and very, very popular with churches in the Corning area.

Q And Worldwide Communion?

A That comes during the Easter season to churches in Corning.

Q And World Day of Prayer?

A Yes. That was just announced for this year, the last of March. They have that every year in Corning, ecumenical.

Q Do you recall Mrs. Ross testifying that she didn't know what One Great Hour of Sharing was?

A No, I do not.

Q And that she didn't know what Worldwide Communion was?

A No.

Q I call your attention to the 1972 tax return of Herman and Judith Clark, and I show you your work papers (indicating).

Mr. Conlin, you keep referring here to these folders. Are you using those to refresh your recollection in testifying?

A No, just to get the paper out that was in it.

Q And that came out of what folder?

A The one marked "Clark -- 1971 return."

MR. HOULIHAN: May I look in that folder, by the way?

(Folder handed to Mr. Houlihan.)

Q This is the folder that you prepared, is that right, Mr. Conlin?

A No.

Q You didn't prepare this?

A No.

Q Who prepared it?

A That is a folder that my attorney ga[illegible]e with each return that he was going to use as an exhi[illegible]

Q Your attorney gave this to you?

A Yes.

Q That is his handwriting that appears under "Clark"?

A I wrote the name on it.

Q You wrote the name?

A Yes.

Q Who cut the little portion of the indictment out and put it in there?

A My attorney.

Q And the note on the top of this copy of Mr. Clark's work-sheet says, "His handwriting." Who wrote that?

A My attorney gave that to me.

Q Mr. and Mrs. Clark had a deduction this year for sales taxes, did they not?

A Yes.

Q And this is sales taxes over and above the amount permitted by the schedule, is that right?

A By the tax tables, yes.

Q What was that additional sales tax for?

A A car and post-flood replacement rebuilding.

Q Post-flood replacement rebuilding?

A Yes.

Q You mean you took a deduction for carpeting? Don't you mean that, Mr. Conlin?

A Yes.

Q And carpeting isn't allowed to be taken as a deduction on an income tax return?

A Just the sales tax.

Q That's right. It is not allowed to be taken over and above the tables, is it?

A Post-flood rebuilding we take in addition to the sales tax table.

Q Mr. Conlin, doesn't it say specifically five items in the income tax law? Doesn't it say an automobile, a boat, an airplane, a mobile home and the cost of a new residence?

A It is my opinion that no provision has been made in the U. S. Sales Tax Chart allowance for post-flood rebuilding, and certainly, those victims are entitled to take out sales tax in addition to the chart for that when they would allow them to take sales tax on a car.

Q Do you recall Mr. Clark's testimony that he didn't have any damage in his house to carpeting as a result of the flood?

A No.

Q Do you have any note as to what damage actually occurred to his house?

A "Water over eighteen inches in the cellar. Lost washer, dryer, items stored, frozen foods. Will prepare list of personalty loss in flood."

Q Was there any list ever provided to you, Mr. Conlin?

A No.

Q If there was eighteen inches of water in the cellar, why would you consider the carpeting to be allowable rebuilding expense?

A They must have had carpeting finished off in the cellar.

Q Did you hear Mr. Clark testify to the contrary, that he didn't lose any carpeting?

A No.

Q But that is your recollection, that he did have carpeting in the cellar?

A No. All I can say is he gave me carpeting as post-flood rebuilding replacement.

Q He told you that? He used those words?

A Yes.

Q He said, "Post-flood rebuilding replacement"?

A After the flood.

Q These people that went to you to have their tax returns prepared, Mr. Conlin, seemed to be very gifted as to the type of language they used, is that right? I mean, they know quite well they should call something "post-flood rebuilding" rather than, "I just bought some new carpeting for my house because I wanted to"?

A It is because I asked them if that is what it is.

Q You asked them what it was?

A Yes.

Q Did you provide the terms, then?

A "Post-flood" is anything purchased to replace after the flood.

Q Would you say that these people had a workable knowledge of the Internal Revenue Code?

A I don't know.

Q Were they depending on you, or were you depending on them to interpret the laws?

A It is my opinion that anything they replaced that was lost in the flood, they are entitled to a sales tax deduction in addition to the chart allowance.

MR. HOULIHAN: Would you please read back that question?

(Last question read.)

Q Would you answer that question, Mr. Conlin?

A There was no law interpretation. I depended on them to answer my questions, to give me the information.

Q Is there some interpretation as to whether Mr. Madden could deduct his clothing expenses?

A There was a discussion.

Q And you told him, "No"?

A I firmly expressed my opinion that ordinary clothing, in my opinion, was not deductible. It had to be something specific beyond that for normal use which he was claiming.

Q And he said, "Even though they are used in normal, I want to put it down anyway"?

A No, sir. He maintained they were strictly for business, and he likened his circumstances to that of actors and those that purchased clothes for specific occasions.

Q Do you recall Mr. Madden testifying that wasn't, in fact, the case, that you, in fact, brought it up?

A No.

Q You don't recall that testimony?

A No.

Q I notice on the Clark return that there is a note in your handwriting that says, "SBA not a factor for this year." Is that correct?

A Yes.

Q Is that in your handwriting?

A I printed it right on the return.

Q What does that mean?

A They indicated there was no SBA loan.

Q But no one else, of these returns that we have gone over so far, indicated that they had SBA loans either, did they?

A I have seen them on my work papers that I have gone through so far.

Q Did you ask them anything about the amount of reimbursement that they received from Small Business?

A It was discussed on many occasions, and my position was well known.

Q Pardon me?

A My position was well known.

Q What do you mean your position was well known?

A That it was not to be treated like insurance and become taxable.

Q But you made a note right on Mr. Clark's return here, "It is not a factor this year"?

A Yes, because by this time some issues had been made of it, and he indicated there was no SBA loan, so I wrote it on.

Q By this time some issues had been made, and this was February of '73?

A Yes.

Q Mr. Clark had a worksheet that he gave you at that time, didn't he?

A I don't recall that he had a worksheet, but he may have.

Q I show you Government's Exhibit 52 in evidence, and that is a worksheet, is it not?

A Yes.

Q And that shows specific charges for interest?

A Yes.

Q And taxes?

A Yes.

Q And insurance?

A Yes.

Q And medical bills?

A Yes.

Q It says drugs and doctors here of $250.95 you had on Mr. Clark's income tax return, and you took a deduction far in excess of that, didn't you?

A Yes.

Q And why was that?

A The return requires the doctors to be broken down by name. He used my phone right there and called someone and got the information. I gave him the name for 1971, and he discussed it and called the figures back to me by telephone right at my desk.

Q And he discussed that with whom?

A I don't know. He made a phone call right there at my office.

Q How could you tell he made the phone call? Is that written down here?

A No. I remember it.

Q You remember this specifically?

A Because he does it every year.

Q He did that every year? He did a worksheet before he came in?

A He just had one figure for medical and needed it broken down.

Q So every year he came in and gave you one figure, and every year he prepared a list before he came in?

A Not on medical.

Q And then he comes into you, and he has to make a telephone call?

A Yes.

Q And he did the same thing the year before?

A Yes.

Q And you recall that?

A Yes.

Q How do you recall that?

A Because I am surprised that he repeated it the second year the same way.

Q I know you are surprised, and I am equally surprised, but my question is how do you remember it? Do you have any notes any place?

A No, I remember the incident.

Q You just remember this particular incident?

A I have the amount written right down here as he gave them to me.

Q It is a fact, is it not, Mr. Conlin, that you could write those amounts down any time you wanted to?

A No, because this is what was actually on the return.

Q Wait a minute. These amounts here in blue ink could have been written after the indictment, couldn't they?

A No. This is the way the return is prepared. This went to the staff, and the return was filed on February 14, 1973.

Q As I understand it, this with the blue ink on it went to the staff?

A Yes.

Q And then they prepared the rest of the return?

A Right.

Q How come this is all in your handwriting, Mr. Conlin?

A It isn't.

Q That is not your handwriting?

A No.

Q How about those figures, Mr. Conlin?

A That is staff figures.

Q Those are staff figures?

A Yes.

Q I would like to know, Mr. Conlin, why there are expenses that appear on this income tax return that do not appear on the worksheet of Mr. and Mrs. Clark?

A Because Mr. Clark gave them to me orally.

Q Isn't it a fact that he has interest expenses listed on

there?

A Yes.

Q And isn't it a fact that he has got interest expenses listed on there down to one of $7.16?

A Yes.

Q And yet his income tax return shows a deduction for installment purchases of $92.14?

A Yes.

Q And they do not appear on the worksheet, do they?

A No.

Q And where did that figure come from?

A Mr. Clark.

Q Isn't it a fact that you used the figure $92.14?

A He said about the same as last year, which was 94.82.

Q And so you arbitrarily chose 92.14?

A I asked, "Is this figure approximately right?"

He said, "Yes. Use it."

Q Mr. Conlin, isn't it a fact that you used that figure of $92.14 on any number of occasions?

A It was close to this figure.

Q And you used it for many different taxpayers, haven't you?

A Yes.

Q The exact same figure?

A Yes, if it was in relation to last year's figure.

Q You just pick a figure out of the air and say, "Is that about right?"

A No. I compare it with the prior year.

Q That doesn't compare with the prior year?

A It is close enough to it, so I used it. I don't dream up a different one for each one. I say, "Is this close enough?" And they say, "Yes."

Q Weren't you surprised that Mr. Clark would have a work-sheet prepared down with interest all the way to even the Corning Building Company of $7.16 and yet forgot to put down any figures totaling $92.14?

A These were the miscellaneous items that he didn't feel were worthwhile listing.

Q But he did feel that $7.16 was worth listing?

A Apparently, Corning Building Company was unusual to him. It wasn't on the previous year.

Q Did he tell you that?

A What was your question?

Q Did he tell you that?

A Tell me what?

Q That it was unusual?

A No.

Q With regard to Larry and Joanne Madden, the 1972 return, you prepared that, did you not?

A Yes.

Q Do you recall Mr. Madden testifying on the stand here in this courtroom?

A Yes.

Q Do you recall what he said that he paid for medical insurance?

A No.

Q Mr. Conlin, do you have any notes on your worksheet regarding how much Mr. Madden paid for medical insurance?

A No.

Q And it is a fact, is it not, that he did not pay $300 for health insurance?

A I don't know.

Q How did you arrive at the figure of $150?

A He had $150 on the prior year. I said, "Did you pay over $300 this year like you did last year?"

He said, "Yes." He didn't have enough to exceed three per cent exclusion, so we took $150, the same as last year.

Q How about the year before? Do you have those records with you?

A Yes.

Q 1970?

A I believe '71 is the first year I prepared it.

Q Do you recall Mr. Madden's testimony that you suggested that he deduct his clothing?

A No.

Q You don't recall that?

A No.

Q If he did say that, would he be mistaken as to the facts?

A Absolutely.

Q Who suggested it?

A He did.

Q And what about the figures? Where did they come from?

A From he and his wife.

Q Do you recall Mr. Madden testifying that he never told you that he bought six sets of cufflinks for $148.80?

A No.

Q You don't recall that?

A No.

Q Referring to the 1971 tax return, your work papers have Mr. and Mrs. Madden, and that was the first year that they came to you, is that right?

A I believe that is right.

Q Where are your figures on the health insurance on that worksheet?

A There are none.

Q How did you arrive at the figure of $150?

A The fact that he told me he paid more than $300 for medical insurance.

Q Isn't it a fact, Mr. Conlin, that you just put down $150 because that is the maximum, and no one will check it?

A No.

Q Calling your attention, now, to the return of Mr. and Mrs. Bassney. I show you your worksheet, and with regard to gasoline taxes, Mr. Conlin, do you have notes on that, Mr. Conlin?

A Yes.

Q And how much mileage does that show?

A 58,000.

Q Where did you get that information, Mr. Conlin?

A Mr. Bassney.

Q Isn't it a fact that Mr. Bassney told the Internal Revenue Service that he only told you 16,000?

A I don't know.

Q You don't know that?

A I don't remember.

Q Isn't it a fact that you, yourself, obtained a sworn statement from Mr. Bassney?

A He prepared an affidavit.

Q You prepared it for him, didn't you?

A I don't recall. A sworn statement -- I don't recall.

Q You don't recall that you prepared it for him?

A I don't recall.

Q It was prepared right in your office right with you present, wasn't it?

A I would have to see it to tell.

(Document handed to the witness.)

Q There is an affidavit right there, and is that the one you are speaking of?

A (No response.)

Q And that was prepared right in your office, wasn't it?

A Yes. He dictated it.

Q He dictated it?

A Yes.

Q You had nothing to do with it?

A No, other than lending him my machine.

Q He was in your office when he dictated that, wasn't he?

A Yes.

Q Why was he there?

A Because he had been called for some kind of a hearing, as

I recall. I don't know just exactly what right now.

Q Isn't it a fact that you did Mr. Bassney's audit? You assisted him in the audit?

A Yes.

Q Isn't it a fact, Mr. Conlin, that you asked him to change his testimony from his previous statement that he gave to the Internal Revenue Service?

A No.

Q Isn't it a fact, Mr. Conlin, that you asked him for a positive statement to overcome previous statements that he had signed to the Internal Revenue Service?

A I asked him to state his position and state the facts as he knew them to be, or remembered them to be, and not be persuaded by myself or anyone. It would be a free statement on his own as to exactly where he stood.

Q So you wrote him a very simple letter to that effect, didn't you?

A Yes.

Q And that is Government's Exhibit 71 in evidence, is that right?

A (No response.)

Q This is the letter that you wrote, isn't it (indicating)?

A Yes.

Q Isn't it a fact that you tried to get Mr. Bassney to change his testimony concerning the subject of the audits and the subject of what he told the Internal Revenue Service people?

A No.

Q Paragraph 3 says: "It is important that you advise us as to whether you were in an extreme state of anxiety and nervousness and whether they allowed you to freely express yourself, or if they rather manipulated you in a tense atmosphere and practically spelled out the words they wanted you to sign."

A That is what he told me.

Q That is what he told you?

A That is what he told me.

Q Isn't it a fact, Mr. Conlin, that you wrote these things to him?

A After he told me what was going on, and I indicated they had him all disrupted. I said, "Make your position clear. Tell the truth as you remember it."

Q Isn't it a fact if that were the case, Mr. Conlin, that you would never have had to write him the letter because you would have had him face to face?

A Repeat that, please?

Q You were talking to him face to face when he told you that, weren't you?

A (No response.)

Q You would never even have to suggest that in the letter, would you?

A I wanted him to make his position clear.

Q Why didn't you just write him a letter and say, "Tell me what happened"?

A I did.

Q No. You suggested exactly what happened, didn't you?

A No. I wanted him to put in writing what he was confronted with.

Q And he also says in another paragraph, "Ed, please give me a written statement that you think your property dropped a good $14,000 in market value because of the flood damage. Positive statements signed by you in this matter will overcome the statements which you signed but which you did not write and that you signed under duress. It is important that we place these wrongdoers where they belong. Federal Judge Burke says: 'No arm of the government is empowered constitutionally to screen a community to find something wrong to pin on somebody.'"

By the way, when did you have a conversation with

Judge Burke?

A I didn't.

Q Where did you get that quote?

A Because I have heard of some speeches that he has made, and he writes on dignity of man.

Q Where did you hear these speeches?

A I have heard comments on it that it is unconstitutional to make a witchhunt, that you find the crime, and then you find the wrongdoer. You don't try to take a person and try to pin something on him.

Q Where did you see Judge Burke speak?

A I didn't. I have heard of many compliments about speeches he has made on the constitutional rights of man.

Q Is that right? You heard many speeches that Judge Burke has made on the constitutional rights of man?

A Yes.

Q How long ago did he make these speeches?

A I don't know. I have heard many fine comments on speeches he has made over the years.

Q I want to know specifically where you got this quote from Judge Burke?

A It is not a quote.

Q You said, "Federal Judge Burke says, 'No arm of the government is empowered constitutionally to screen a community

to find something wrong to pin on somebody.'"

You are saying that Judge Burke said that, aren't you?

A This is the impression I get from conversations with many people that have attended meetings where Judge Burke has been the speaker.

Q Can you tell me who told you that?

A I talked to several people who have said that they know the Judge and they sat at meetings with him and heard speeches like that. Most of them have been attorneys, as I recall.

Q It is a fact, is it not, that you felt very free to show Judge Burke's name around in order to try to persuade Mr. Bassney to change the testimony that he had previously given to the Internal Revenue Service?

A No, sir.

Q Isn't it a fact, Mr. Conlin, that the Internal Revenue Service took a statement from Mr. Bassney where he said that he told you that he only drove 16,000 miles and that after he received your letter, you told him that it was 58,000 miles?

A Would you repeat your question, please?

Q You were aware, were you not, at the time that you wrote this letter to Mr. Bassney that he had already given a

statement to the Internal Revenue Service saying that he told you that he drove only 16,000 miles?

A I can't recall. It may be. If it is in that letter, then I knew it.

Q And you wanted him to say that it was more than that, didn't you?

A I didn't ask him to say anything other than what he remembered that he told me.

Q (Reading): "And, again, under circumstances in which you found yourself, you were just making a wild guess, and you felt considerably under duress. You either provide me with a statement saying that you feel the mileage which you gave the auditor in Elmira, 34,000 miles for both cars, is more factual, or that the 16,000 miles that you gave to the Intelligence men is more factual."

Isn't it a fact that you suggested that he was making a wild guess?

A That was my conclusion because his variance was so great.

Q Isn't it a fact, Mr. Conlin, that many of your clients were audited for the years 1972?

A Yes.

Q Now you heard Mrs. Beach testify, didn't you, concerning the number of tax returns that were prepared in 1973?

A Yes.

Q And I believe the figure was 1,392 tax returns?

A Yes.

Q That is not really an accurate figure, is it?

A I think it is very fair.

Q Very fair and accurate?

A Yes.

Q And it is a fact, is it not, Mr. Conlin, that you called each and every one of these witnesses that appeared in this courtroom prior to the time that they appeared before the Grand Jury to try to discuss their testimony with them?

A No.

Q Did you call a lot of them?

A Yes.

Q But you didn't get ahold of them, did you?

A I don't know.

Q Isn't it a fact that you did get ahold of some people and suggested that they must have made a mistake when they told you that information?

A No.

Q Isn't it a fact that you wrote letters to people with the intention of trying to create a doubt in their mind as to what they told you?

A No.

Q Isn't it a fact that you told many people who appeared before the Grand Jury they should agree with everything that is on their return?

A They should stand behind what they said.

Q They should stand behind what they said?

A Unless they felt it was wrong, then admit it, tell the truth.

Q It is a fact, is it not, Mr. Conlin, that you tried to create the impression to these people that they were being investigated, and because they had signed those returns that they would be prosecuted?

A No.

Q Isn't it a fact that you sent out all sorts of letters to all of your clients trying to put a stop to the Internal Revenue Service investigation?

A No.

Q Trying to hamper it?

A No.

Q Trying to create doubt in their minds?

A No.

Q It is a fact, is it not, Mr. Conlin, that the Internal Revenue Service has audited some six hundred returns pre-

pared by you, three hundred in 1972 and two hundred and thirty-four in prior years?

A I'm not aware of those figures.

Q They haven't audited any thirteen hundred and ninety-two returns, have they?

A No.

Q And you represent most of the people in those audits, don't you?

A Those who contact us, we take care of.

Q And you wrote letters to everybody saying, "If you are ever contacted by the Internal Revenue Service, call me immediately," didn't you?

A That if it is for an audit, to call me. And if it is for an investigation by Intelligence, to call their attorney.

Q Isn't it a fact as of March 26, 1976, that $327,495 in additional taxes have been assessed against your clients?

MR. LEVY: I object.

THE COURT: I will sustain the objection.

THE WITNESS: I know nothing about it.

THE COURT: I will sustain the objection.

Testimony of Walter R. Conlin.

Q Mr. Conlin, what is an estimated tax return?

A Would you repeat that question, please?

Q Do you know what estimated tax is?

A We have to estimate taxes many times.

Q And how is that done? Would you explain to me procedureally how is that done?

A We endeavor to use figures from prior years, and what are the modifications for the year involved, and project what the estimated tax will be.

Q For the next year, is that right?

A Yes.

Q When is the first time that you make an estimated payment of taxes for the following year?

A The first time would be April 15th.

Q And you don't generally do this for people who receive salaries and W-2 income, who have withholding taxes taken from their salary, do you?

A Unless there is outside income.

Q Unless there is some other income?

A Yes.

Q Then you would do it?

A If they can't increase their withholdings, then we would do it.

Q Isn't it a fact that the estimated tax that you pay for the following year is usually based on how much income you had that particular year?

A Would you repeat that, please?

Q Assuming that you were going to pay estimated tax for 1972, when would your first payment be made on estimated taxes?

A April 15 of '72, June 15, September 15th, and sometimes people don't pay it until September.

Q And your estimate of taxes computed, based upon the figures that you had for the prior year, isn't that a fact?

A Yes, modified by anticipated changes.

THE COURT: At this time we will take a short recess.

(Recess from 11:20 a.m. to 11:40 a.m.)

CROSS EXAMINATION CONTINUED

BY MR. HOULIHAN:

Q Mr. Conlin, you submitted this document, which purports to be your 1971 tax return to the Small Business Administration, and you have a date on there "April 2, 1972," is that correct?

A Yes.

Q And that is the date you prepared it?

A Yes.

Q And it shows that you had total estimated payments of $4,200, is that correct?

A Yes.

Q Now your 1970 tax is in the neighborhood of $700, is that correct?

A Yes.

Q If you had taxes of only $700, why did you pay estimated taxes of $4,200?

A Because 1971 had considerably improved.

Q And you anticipated that?

A Yes.

Q Isn't it a fact this $4,200 includes a payment of $1,500 in there that you paid, is that correct?

A Yes.

Q Isn't it a fact, Mr. Conlin, that you didn't make that payment of $1,500 until some three months after that return was purportedly prepared?

A No.

Q I'm sorry -- some twelve days after that return was prepared?

A Yes.

Q And that shows that there were no prior estimated tax

payments for 1971, doesn't it?

A It is frequently done to send that additional amount.

Q Was that on top of the $4,200 that you already paid?

A No.

Q Now you prepared the loan application for Mr. Gill, did you not, to the Small Business Administration?

A Yes.

Q And where did you get the information that you put on that loan application?

A From materials supplied by Mr. Gill.

Q And you provided to the Small Business Administration copies of his 1970 and 1971 tax returns, did you not?

A No.

Q Did you have copies of his 1970 and '71 tax returns?

A No.

Q What happened to them?

A I don't know.

Q You had filed the returns for 1970 for Mr. Gill, didn't you?

A That has come to my attention since. At that time I did not know it.

Q And the figures that appear on the loan application are all written in your handwriting, is that correct?

A Yes.

Q And this shows the gross sales of $181,294.22, is that correct?

A Yes.

Q Where did you get that information?

A Mr. Gill.

Q That was for the year 1970?

A Yes.

Q And you, in fact, prepared his 1970 tax return, didn't you?

A That has come to light since, but I didn't realize it at the time.

Q You have previously retained all of the prior filing records of the clients that are the subject of this indictment except Mr. Gill's, is that right?

A I didn't have anything on 1970 on Mr. Gill.

Q But you did prepare his 1970 tax returns?

A That has come to light. He knew I didn't have it.

Q Did he have a copy of it?

A I don't know. I didn't realize he did.

Q You didn't realize that he did?

A I don't know that he had it or not.

Q Did he give you any physical documents to use for 1970 in order to prepare this loan application form?

A Just his compilation of losses, and the rest was information

that he and I discussed, and he gave me the starting figure.

Q He gave you the starting figure from his memory?

A No.

Q From what?

A I don't know. He came up with this beginning figure for me to use.

Q And then you wrote out the 1970 and '71 returns, based on that information?

A Not the returns -- the estimates based on that information, projections still to be screened down beyond what they were.

Q What do you mean "still to be screened down"?

A Because they are just estimates. We had to have a place to begin. We had no record.

Q Did you point out any place on the application that these were estimates?

A To the SBA representative.

Q You told him that?

A Yes. In fact, he worked with me to fill in the statement that you are looking at now.

Q Isn't it a fact that the only statement in his handwriting is the one that is in ink, and all the other ones were done in your handwriting?

A Yes.

Q How would he know how much Mr. Gill made?

A Because I had the estimated returns with me at the time I discussed that Page 2 in the application with Mr. Qualey.

Q When was that?

A January 4th, 1974.

Q You had the estimated tax returns with you at the time?

A Yes.

Q That, in fact, overstates Mr. Gill's income by $100,000, does it not?

A I don't know.

Q When you say Mr. Gill provided you with the starting figure, what do you mean by that?

A It is necessary for us to come up with an income factor on our estimated 1040's, and all we had to go on is an outline of losses. We began with inventory turnover and so on and so forth. And we had to have a beginning figure. And he worked it out and advised me of the sales and the purchases to begin with.

Q Did he do that with each item that appeared on the depreciation schedule?

A On the depreciation schedule. I broke his list down between inventory and fixed assets, and he advised me of how much to break down on the depreciation schedule, the

additional assets and approximately when he obtained them, that were not on the 1969 depreciation schedule.

Q Where did he get the figures for the depreciation schedule?

A From his list of losses.

Q And it is your claim he didn't have any tax returns with him that he filed from prior years?

A Not with me, yes.

Q You didn't retain files on those?

A Because his 1970 wasn't in the file. I didn't even believe I had prepared it.

Q There came a time, did there not, that you turned those returns over to the Small Business Administration in connection with Mr. Gill's loan?

A Yes.

Q And then they handed you a letter, is that correct?

A I didn't turn the return over. They handed me a letter.

Q And you hadn't turned the returns over?

A No.

Q Did you hear Mr. Qualey testify that he received the returns on January 4th?

A No.

Q You don't remember that?

A No. He took pictures of my original copies.

Testimony of Walter R. Conlin.

Q Do you recall Mr. Cristofaro testifying that he had copies of those returns prior to the time that you came in to interview with him on January 18th?

A Yes.

Q And is he mistaken as to those facts?

A Definitely. He may have had the ones Qualey took, but he didn't have the ones I took with me that day.

Q You did give Qualey copies of the returns in 1970, is that right?

A I made machine copies of them on January 14th when I was there.

Q And those were identical with the ones that you had with you that day, is that right?

A I had made no further changes on them, that's right.

Q Mr. Conlin, the day that you met with Mr. Cristofaro you tried to take those returns out of the office with you, didn't you?

A Yes.

Q And why did you do that?

A What returns are you referring to?

Q The 1970 and '71 returns?

A The returns I went in with, those are the ones I wanted to take out with me.

Q You claim that you went in with them?

A Yes.

Q Let's assume that you did, and you wanted to get those out.

A Yes.

Q Why?

A Because the letter indicated that the file had previously been withdrawn. It was not the information that they wanted. They had us come down there for this meeting. He could have advised us, it seems like, beforehand, that we didn't have what they wanted. They knew they were estimated returns, and they indicated they wanted a completely new application, and so why not begin right from scratch? That is exactly what the letter said they wanted.

Q Isn't it a fact the letter only said they only wanted to verify the returns you already filed?

A I believe the letter asked for additional information, a new application, the fact that everything had been previously withdrawn.

Q Why were the tax returns that you claim that you brought with you that day, why was that not the information that they wanted?

A Because they wanted copies of actually-filed returns.

Q Did you explain that to them at the time?

A Yes.

Q Why were you so anxious to leave with those returns?

A Because these were not the returns they wanted. You don't leave returns around for the same year with different information on it.

Q Why didn't you just leave them there and say, "Those are just estimates. We will get you the filed ones, but just keep those documents, but understand that those are estimates." Why didn't you do that?

A They never requested me in that way.

Q They told you that you couldn't take those documents with you, didn't they?

A Yes.

Q Why didn't you just leave them there?

A Because we wanted the whole file. They said we could have the whole file and re-submit.

Q Isn't it a fact, Mr. Conlin, that the reason you wanted to take those returns is that you knew they were false and you knew they contained false information, and you wanted to get them out of there as soon as possible?

A No. They knew they were estimated returns.

Q Why did you rip them up?

A (No response.)

Q Why did you rip them up in tiny pieces?

A Because with all the duress we were under, and when we got there and found out that we had been doing all of this for nothing right up to the moment when he even asked us to sign these estimated returns and gave us the letter saying that -- and were pre-judged -- and completely withdrawn months before we were even there, which we could have been advised on. Then when they said that we just couldn't take them and what have you, I just reacted and got mad and tore them up and put them right back in my briefcase.

Q Isn't it a fact, Mr. Conlin, you were well aware that that application had been withdrawn because you failed to provide information to them back in April of '72?

A I believe that is what the letter they gave me that day said.

Q You were aware that that application had been withdrawn on April 12, 1973?

A If that is what the letter says that day.

Q I show you Government's Exhibit 1 in evidence. You knew that; you were aware of that, were you not?

A I don't recall if I had seen this letter previously or not. But I do know that they encouraged us to bring the work on

it and bring additional information in.

Q And additional information that they wanted was the tax returns, isn't that right?

A The Page 2 of the application completed in the tax returns.

Q And you submitted those, but then you wanted to take them with you for some reason?

A Yes.

Q Why did you rip them up in little pieces?

A Because I was mad.

Q Why did you hide them on your body?

A I didn't.

Q You mean they are lying about that?

A When I was talking on the telephone clear at the end of the other room, previous to that, the FBI man said he would have that briefcase before I left. And when I was talking on the telephone, I took a handful and tried to shove them in my inner coat pocket. I said that if they are going to get these, they are going to take me. Some of them stuck in my pocket, and a few of them dropped on the floor. That is it.

Q When they searched you, you stripped down to your undershorts, didn't you?

A Yes, sir.

Q And paper fell out from inside your shirt, didn't it?

A No, sir. It was caught in the pocket of my shirt.

Q It was just caught in the pocket of your shirt?

A Yes.

Q And Mr. Garrity was wrong when he said that he saw you shoving it inside your shirt and down your pants?

A Yes, sir.

Q And Mr. Bucher, the FBI agent, was wrong when he said that he saw the paper fall from inside your shirt and inside your pants?

A I don't think he said that. But the only place it fell from was from the pocket of my shirt. I was right there and saw it, and took it out of the pocket of my shirt.

Q And Mr. Rudy was also wrong when he said that he found portions of these papers stuffed inside your shirt and inside your pants?

A If he said that, then he is wrong.

Q You did not do that?

A That is right.

Q You did not try to take these things and hide them on your body in any way?

A No, just to shove them in my inside coat pocket.

Q Were they all ripped up in these little tiny pieces?

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A For the most part.

Q Why were you so anxious to get them into tiny pieces? Why didn't you rip them in half once?

A I was just mad. That is what I did. I can't even account for it. That is the way I reacted.

Q It wasn't until an hour and a half later that you said that you brought them in, was it? You told Mr. Bucher that?

A Oh, no. It was right there.

Q Mr. Bucher is mistaken as to that testimony, is that right?

A What was his testimony?

Q Don't you recall his testimony, that you didn't say anything to him for an hour and a half after they arrived in the Small Business Administration office?

A He wanted me to sit at Mr. McDevitt's desk for an interview. The other gentleman went up in Mr. Cristofaro's office. And he told Mr. Garrity about some form he wanted him to get, and I told the gentleman that was interviewing me, I said, "I prefer not to make any statements or sign anything until my attorney is present." With that he got up, went up in the other office to call the U. S. Attorney, and I went back out to the phone, and I continued my conversation with my client's attorney, and that is

where I shoved the stuff out of the briefcase into my pocket.

Q And it was just into your pocket?

A That is where I intended it to go.

Q And you did not tell Mr. Bucher or Mr. Rudy that you brought those things in until an hour and a half later, is that right?

A No, sir.

Q Did you tell him before that?

A Yes, sir.

Q When?

A One of them came back and told me the U. S. Attorney wanted to talk to me on the phone, and they stood right there and heard me tell the U. S. Attorney right on the phone, "What I came in with, I want to go out with."

And he asked to put one of the FBI men back on, and I went back on the phone and continued my conversation with my client's attorney.

Q Mr. Bucher is mistaken in his testimony that you did not make any statements before an hour and a half?

A I know he was right there and heard what I said on the phone.

Q And Mr. Rudy is incorrect when he said that you didn't

make any statements concerning those documents?

A He stood right there and heard what I said on the phone.

Q I'm asking, are they mistaken?

A Unless they weren't listening, they have to be mistaken.

Q And Mr. Garrity was mistaken when he said you didn't say anything to him when he told you that you couldn't remove those documents?

A Oh, absolutely.

Q And Mr. Cristofaro is also mistaken when he said that you didn't say anything to him?

A Absolutely.

MR. HOULIHAN: I have no further questions.

REDIRECT EXAMINATION

BY MR. LEVY:

Q Do you recollect whether or not you did anything for Mr. Brush in regard to his SBA loan?

A I can never recall discussing it with him at all. I may have, but to my best recollection, I cannot recall.

Q Did you ever meet with Special Agent McIntyre?

A No, sir.

Q The only thing you got from Special Agent McIntyre was that short letter that has been shown to you?

* * * * * *

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January 6, 1977

Re: United States of America vs. Walter R. Coulin,

76-1346

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County of Onondaga) ss.:
City of Syracuse)

JOHNSON D. HAY,
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Attorney(s) for United States,

2 Briefs, 1 Appendix

(X) he personally served three (3) copies of the printed ☒ 2 Brief ☐ 1 Appendix of the above entitled case addressed to:

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cc: Richard J. Arcara, Esq.

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LEVY, FELDMAN & LICATA
(By David M. Levy, Esq. and
Walter J. Licata, Esq.)
45 Exchange Street
Rochester, New York 14614

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cc: Richard J. Arcara, Esq.

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